

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

EIGHTH LEGISLATURE

OF THE

STATE OF MAINE,

PASSED AT THE SESSION

**WHICH COMMENCED ON THE SECOND DAY OF JANUARY, AND ENDED
ON THE TWENTY-SIXTH DAY OF FEBRUARY, ONE THOUSAND
EIGHT HUNDRED AND TWENTY-EIGHT.**

Published agreeably to the Resolve of the 20th June, 1820.

PORTLAND.

PRINTED BY THOMAS TODD.....PRINTER TO THE STATE.

1828.

to contain, at the time of sale, then the said Agent is directed to pay and allow to the said Spofford and Treat for said deficiency, at the same rate per acre, which they contracted to pay at the time of sale, with interest thereon, up to the time of settlement: *Provided*, The said Spofford and Treat, shall before the survey aforesaid, give to the land Agent, satisfactory security, that they will pay all the expenses of said survey, if it be ascertained upon actual measurement, that said lots do contain the said estimated number of acres, and also to pay for the excess, if any there be, at the rate aforesaid.

Resolved, That the Land Agent be, and he is hereby directed to pay to the said Spofford and Treat the sum of six hundred and twenty dollars, to be in full of their claim upon the State, on account of a failure in the State's title to lots numbered eleven, seventeen and thirty five, which they purchased of the State, and for costs to which they have been subjected in defending an action of trespass commenced by Joseph Sewall and others, against the said Spofford for cutting grass on one or more of said lots; to be paid in any securities which the Land Agent holds against them; and if their securities in his hands do not amount to that sum, he is hereby directed to pay the balance, in any monies or securities which he may hold belonging to the State: *Provided*, The said Spofford and Treat shall before, or at the time of the payment of said sum, quitclaim to the State all the right, title and interest which they acquired to said lots numbered eleven, seventeen and thirty five by virtue of the State's conveyance of the same to them.

[*Approved by the Governor, February 16, 1828.*]

STATE OF MAINE.

IN SENATE, Jan. 4, 1828.

Ordered, That so much of the communication made by the Governor to the Legislature, with the accompanying documents, as relates to the Northeastern Boundary of this State, be referred to Messrs. MEGQUIER, WILLIAMS, and HATHAWAY, with such of the House as may join; and that the Committee be authorized to cause such of the accompanying documents to be published, as in their opinion the public good requires.

Read and passed.—Sent down for concurrence.

ROBERT P. DUNLAP, *President*.

HOUSE OF REPRESENTATIVES, Jan. 5, 1828.

Read and concurred—and Messrs. DEANE, of Ellsworth, FULLER, of Augusta, VANCE, of Baring, CARPENTER, of Howland, and BURNHAM, of Unity, were joined.

JOHN RUGGLES, *Speaker*.

The aforesaid joint select Committee of the Senate and House of Representatives of the State of Maine, have considered the whole subject submitted to them by the aforesaid Order, to wit: All the Governor's Message which relates to the Northeastern Boundary, which is as follows, to wit:—

“In the number of our resources is one so conspicuous, that it must early attract your notice. It is that of a wild and fertile territory, embracing about six millions of acres. It is not necessary now to attempt to show how evidently it is subject to your jurisdiction, nor to speak of its distinguished natural advantages which impart to it the capacity of sustaining some hundred thousand yeomen. Valuable, or rather invaluable, as it is, we ought without hesitation to surrender it if we cannot with justice support that claim to it which unfortunately now stands opposed under the difficulty of an ingenuity which has endeavored to obscure the line, and an opposition, which, I trust, you will dispassionately authorize to be resisted under the limitations of a cautious and prudent, yet decided policy.

“The Government of the State, with the exemplary moderation always creditable and necessary, has for years refrained from the exercise of many of its rights. It has been induced to do so, as may be inferred, from its anxious desire to accommodate to the wishes of the federal administration, and its disposition to avoid collisions, inevitably unfortunate, in any result. At the same time, it cannot abandon its obligations, its title deeds, and its rights. It cannot allow the citizens to be incarcerated in foreign gaols. The State would shrink most dreadfully under the shame of such a submission. For the sake of being fully informed, it has for several years solicited the documents possessed by the general government in relation to this subject. It is with great confidence that I urge its consideration now, inasmuch as all that has been requested has been supplied agreeably to what was understood to be the wish of the last Legislature. That invaluable mass of documents, now in the Secretary's Office, and the copies of communications between myself and others contain nearly all that I can offer. The delicate nature of the subject induces me to ask a particular examination in reference to publi-

cation, if that shall be proposed, yet, there is no wish on my part that what has been written by myself shall be disposed of in one way in preference to the other. On the most thoughtful revisal, I find no past deviations from my existing sentiments, and am bound to sustain the most rigorous responsibility.

"Amidst the views urged, has been a primary one of that nature, requiring its being submitted to you for correction, if desired. It is in relation to the undefined and perhaps undefinable line of rights between States' and United States' authority, along which construction is constantly urging disputed claims, and, in general, has much the advantage in irruptions upon the States. The Executive of the Union has been considered as disposed to submit the question of the boundary of Maine, with a perfectly friendly intent, but without regarding her as a party, to the umpirage of a foreign authority. The submission itself admits the possibility of an unjust and disastrous decision. While it is not presumed to cast a shadow of suspicion on the integrity with which that authority may be exercised, nor upon the motives of any person whomsoever, it has nevertheless, been deemed a suitable precaution to urge the following propositions. It cannot be arrogance which asserts them as materials of a monument of the rights of our employers, which will become firm by time, when properly combined and cemented by your reflections. If any feeling has been displayed on my part, it has been indulged with a view of eliciting results which it was believed would be salutary and acceptable. At the same time there has been no intention to abandon those prudential considerations entirely consistent with a free assertion of what it might be supposed the people, through their Representatives, would eventually approve and sustain.

"At the period of forming the treaty of 1783, Massachusetts and the other Colonies were independent of each other, as to territorial rights. The United States, as such, did not exist.

"Although the Colonies constituted common agents to form that treaty, the territorial rights secured did not, by virtue of that instrument, accrue to the nation, but were merely acknowledged and confirmed by it to the existing individual corporations, according to pre-existing grants, crown lands only being excepted.

"When the Union of the States was framed, in that happy arrangement we are still permitted to witness, and which created a general guardianship, without extinguishing a particular independence, the compact left Massachusetts the Proprietor, as one party, in severalty of all her soil. She held it

fully with undiminished interest, and has conceded her jurisdictional control only by that magnanimous act, usually called the Separation, which received validity from the concurrence of Congress.

“The Union having no right to cede the territory, the treaty making power, as only a constituent part, cannot exercise a function beyond the grasp of the delegated power over the whole, nor, indirectly, by an umpire, do what it could not accomplish without ; that is, consent to the alienation, or the possibility of an alienation of territory, which I will show is solemnly acknowledged through the President, to be ours.

“It has, therefore, been believed to be due this State to advance the doctrine that the submission of its boundary, to an umpire, unknown to herself, and upon terms not confided to her consideration, will leave her at liberty to act upon the result as to the country and herself may be dictated by the most just and patriotic inclinations. Yet if it be true that the fifth article of the Treaty of Ghent has involved much of federal authority, beyond the limits which many eminent statesmen have contended to be the true ones, as the treaty exists, the delicacy of the case, in relation to public faith, ought to have some influence upon our assertion of our claim, although an entire concession cannot be expected. It ought to be distinctly understood that there is a perfect harmony of sentiment with the federal administration in a most essential particular, in regard to which the language of Mr. Clay, the Secretary of State, is calculated to be highly satisfactory. It is as follows : *The Government of the United States is fully convinced that the right to the territory is with us and not with Great Britain. The convictions of Maine are not stronger in respect to the validity of our title, than are those which are entertained by the President.*”

“Whatever may be the character of the proposed umpirage, it seems necessary to adopt some rule of procedure as to the duties to be discharged before its results shall be known, and I cannot but hope to learn from you, in some way, what measures you will consider to be proper, if such acts as that of the arrest and incarceration of Baker shall be repeated.— There will be no wish to go beyond your direction, nor to fall short of it ; and, thus far, while the object has been to give no assent to injustice, there has been a steady view to your contemplated consultations and probable commands. It was an arrest which the testimony seems to me to condemn ; yet it cannot but be hoped that the neighboring government will place right the hasty acts of unthinking agents, and that we, expecting that generous conduct which springs from the

character of an Englishman, should not suddenly and unnecessarily engage with him in contentions. While we were acquiescing in the abeyance of our rights, as connected only with property, the call for interposition was not imperative, but when unauthorized power was applied to the persons of our citizens along the Aroostook and in other places, it seemed proper to ascertain the facts, in order to submit them to your consideration and to that of Massachusetts and the nation, both of which will feel an interest, not only in the protection of our fellow citizens in Maine, but in the other relations of the subject. A letter was, therefore, sent to the Lieutenant Governor of New Brunswick, containing a request that he would cause information of the facts relating to the arrest of Baker, to be returned. While in his reply he acknowledged, in favorable terms, the amicable disposition professed by this government, so far as, on the occasion, it was represented, he declined to make the explanations requested, excepting to those with whom he is directed to correspond, or under whose orders he is placed.

"It must be known to you that in addition to the means above mentioned, Mr. Daveis was appointed to obtain the information which all have appeared to consider desirable. From what has transpired there is no doubt in my mind of the intention of the government of New Brunswick to extend its jurisdiction and to confirm it, if possible, over the whole disputed territory.

"I cannot but profess to you the disposition on my own part, subject to your direction, to offer some difficulties against such a course; but it is not to be doubted, that the United States' government and that of Great Britain, will perceive, on being furnished the facts, that the government of New Brunswick has advanced beyond the line of tenable ground, and seems not to have listened to those recommendations of mutual forbearance, which have been rung so loud that we did not notice its invasions.

"Another of the objects of the mission of Mr. Daveis was to obtain the release of Mr. Baker, whose arrest was thought to be not only cognizable by the United States, but by the particular State of which he is a citizen. His confinement in the gaol at Frederickton was an act of power, which, considering the nature of the facts as far as developed, required early attention, and the course pursued was accordingly adopted, not, however, without a careful examination of principles and precedents. If you shall think the measure as involving any excess in the exertion of State power, it would seem to be desirable not to allow it to pass without the expression of your dissent, which would be received, on my part, with the utmost respect and deference.

"The Minister Plenipotentiary of His Britannic Majesty has communicated to Mr. Clay, what are called by the former 'sufficient proofs of the decided resolution of his Majesty's Lieutenant Governor of New-Brunswick to maintain the disputed territory in the same state in which his Excellency received it after the conclusion of the treaty of Ghent'. It certainly would not be desirable to put his Majesty's Lieutenant Governor's decided resolution to the test on this point, but it may be imperatively required to determine how far the treaty of Ghent and previous actual jurisdiction may sanction his authoritative approaches beyond the terms of that treaty, without a reasonable expostulation, not however to be followed by any unnecessary resort to forcible resistance.

"It is not to be anticipated that the deplorable event of a war with Great Britain may not occur again. If that melancholy result of human frailty shall be produced, the situation of Maine will require great resolution and activity. The concentration of the British forces with the view of dividing the Union, by an occupation of New-York, will not be attempted again, but the seaboard and the interior frontier of Maine will be the one a line of maritime invasion, and the other of excursions and incursions according to the emergencies relating to our defence. The effort will be probably to cut off this State, or at least for this we ought to be prepared, so as not to admit any repetition here of such scenes as occurred during the last war. It would appear to be proper to solicit of the general government the erection of some strong fortresses on our interior frontier. Its own disposition and the obvious utility of works so situated, in anticipation of others where the country is better guarded, would, it may be hoped, assure to a representation of this nature, a favorable reception."

The Committee aforesaid ask leave to observe, that they are unable to perceive, that there is any thing uncertain in our claim, arising out of any obscurity in the treaty of 1783, or any of the documentary evidence, or arguments and discussions which led to the description of the boundary therein contained; nor are they informed that the government of Great Britain, or any of their negotiators ever claimed the northern part of this State as a right, but requested it as a cession; it is therefore concluded, that their strong and persevering endeavors to excite doubts, and embarrass the subject, are elicited by the zeal of their essayists, and their subordinate agents, or negotiators, who, while they recommend themselves to the mother government, as zealous, loyal subjects, and faithful agents, are disposed at the same time to gratify other feelings, arising from other causes.

This subject has on several occasions occupied the attention of the government of this State, and has been the subject of reports, and resolves, and all may have been done which the state of knowledge on that subject rendered proper, or the occasion required. The subject is now, from a variety of considerations, assuming a more interesting character. Such is the state of public inquiry, that it may be expected of this Legislature, that they will fairly and candidly spread the evidence of title, and the subject of controversy, before the people, to the end that they may see, examine, and reason for themselves, and form their own conclusions. This, however, would be deemed unnecessary, were it not the fact that what is said; and much of the documentary evidence touching the boundaries of the provinces, prior to the treaty of 1783, is in the hands, and within the reach of very few.

With a view therefore of spreading the evidence of our title fairly before the people of this State, and by the same means, before the people of the United States and the world; it is proposed, to pursue generally the chronological order of events, noticing particularly, such as have any direct relation to the subject, and incidentally, such as tend chiefly to show the connexion between them.

The discovery of America produced an excitement, and a spirit of maritime enterprize among the nations of Europe.—Cabot sailed in 1497 under the orders of Henry VII. of England, and discovered Newfoundland, and North America, and coasted from Labrador to Florida. The spirit of discovery thus early excited in England, subsided, and was not revived for many years. The French prosecuted voyages of discovery to North America, and as early as 1535 attempted a settlement on the St. Lawrence. From this period the voyages of the Europeans to the Northern parts of North America, were principally confined to the fisheries, and to the prosecution of a trade in furs, with the natives, and it was not until 1604, that any settlement was commenced which became permanent.

In 1603, Henry fourth of France, granted to De Monts, all the Country in North America between the fortieth and forty sixth degrees of North Latitude, by the name of Acadie. De Monts, to secure to himself the benefits of his Grant, with Champlain and other adventurers, fitted out vessels and sailed for America; they first touched on the eastern coast of the grant—then sailed round Cape Sable to the Bay of Fundy, touched at Port Royal, now Annapolis, at the St. John, which river they sailed up some distance, and thence followed the coast to the mouth of a river, which they afterwards called

St. Croix, where upon a small island they erected houses and defences, and established themselves for the winter. In the spring they, for some cause, determined on quitting the island, and took what they could of the materials of the buildings, and moved, and established themselves at Port Royal, where they lived and prosecuted the business of their settlement for several years.

In 1607 the British commenced a settlement in Virginia, which became permanent. As early as 1613, for the purpose of getting rid of their neighbors, who might at some future period annoy them, as well as for asserting their claim to the whole country, and appropriating it to themselves or the British government, they fitted out a small expedition under Sir Samuel Argall to dislodge the French in Acadie. Sir Samuel dislodged the French at Mount Desert, destroyed all which De Monts had left on the Island where he first wintered, and captured the French at Port Royal. Some of the French went to Canada, and some united with the natives. The expedition was attended with no important result, further, than it probably suggested to Sir William Alexander, the idea of obtaining a grant of the country—and therefore after companies had in England, obtained grants of various parts of North America, to which they gave their favorite names, such as Virginia and New England, he obtained a grant, which, from its relative situation to New England, or to perpetuate the name of his native country, he called Nova Scotia.*

The grant was made in 1621, by James I. and contained "all the lands of the continent from Cape Sable, thence along the coast of St. Mary's Bay, thence across the Bay of Fundy to the river St. Croix, to its remotest spring head, thence by an imaginary line northward to the river St. Lawrence, thence by the shores of the river to the haven or shore commonly called Gaspe, and thence southward," &c. Sir William seems to have engaged with some zeal, and incurred great expense in fitting out two vessels to take possession of and settle his grant; but all his efforts produced little or no effect, and he abandoned it, and in 1630, sold a part, or all of his grant to La Tour, a subject of France. In the year 1628 or 9, Canada and Acadie were both captured by the British, and were restored in 1632 by the treaty of St. Germain. In 1652, the British fitted out an expedition and took possession of Penobscot, St. John, Port Royal, and several other places. In 1655 a treaty of commerce was entered into between the French and British, and the question of title to Acadie was referred to commissioners.

* See Appendix No. 1.

*In 1663, Charles II. granted to his brother the Duke of York, the country called the Duke of York's territory, next adjoining New Scotland, and extending from the river St. Croix to Pennaquid, and up the river thereof to the furthest head of the same as it tendeth northward; and extending thence to the river *Kimbequin*, and upwards by the shortest course to the river of Canada northward.

1667, by the treaty of Breda, Acadie was again restored to France. In 1689, another war broke out, and the following year Sir William Phipps conquered Port Royal, and other French ports in Acadie.

† Oct. 7, 1691, by the charter of William and Mary, the real Province of Massachusetts Bay was erected, consisting of the former provinces of Massachusetts Bay, New Plymouth, Nova Scotia, District of Maine, and all the territory between Nova Scotia and the District of Maine and the river Sagadahock, and every part thereof, and the St. Lawrence or great river of Canada. It will at once be perceived, that the Province of Massachusetts Bay was in the northern part, bounded west by a line drawn north from the westernmost head of the waters of the Sagadahock, to the river St. Lawrence, north by the river St. Lawrence, east and south by the Atlantic Ocean. The charter contained a limitation in the exercise of the granting power, as to all the tract of country lying beyond the Sagadahock, but it contained no other limitations to its exercise of sovereign power, which were not contained in all other charters granting powers of or establishing governments. Massachusetts exercised some acts of jurisdiction over Nova Scotia, appointed some civil and other officers, but it being so distant, and she having so many other posts, and such extent of other frontier to defend, and the expense being so great, which she must incur for her protection against the assaults of the French and natives, that she was not solicitous to retain it, and in the course of a few years gave it up, and the British Government made it a separate province.

In 1697, by the treaty of Ryswick, Acadie was again restored to the French. In 1702, war was again declared between France and Great Britain, and Acadie in the course of the war was again captured by the British, and was, in 1713, by the treaty of Utrecht, ceded by the French to the British by the description of Nova Scotia, otherwise called Acadie, according to its ancient limits, with some reservations of islands, such as Cape Breton and the islands in the St. Lawrence which were not ceded. For many years Nova Scotia or Acadie thus ceded, seems not to have engaged much of the

* See Appendix No. 2.

† Appendix No. 3.

attention of the British Government. They did in 1719, appoint Richard Phillips governor,* who, for want of subjects, had to select his council from his garrison. The French inhabitants lived in a state of independence, without acknowledging the right or authority of the British colonial government; and the object of the British seems to have been to keep possession of the country, to the end, that they might hold it, and extinguish the claim of France. By the treaty of Aix la Chapelle in 1745, commisssoners were provided to be appointed, to settle the boundaries of Nova Scotia or Acadie, as ceded by the treaty of Utrecht, about the limits of which, the British and French could not agree. Col. Cornwallis was made Governor of Nova Scotia or Acadie† in 1749, and came with soldiers of the late army and others, between three and four thousand, and settled and built the town of Halifax.

Commissioners provided to be appointed by the treaty of Aix la Chapelle were appointed in 1750, and began and continued their discussions for some years, the British contending for, and endeavoring to maintain, one construction of the treaty of Utrecht, and the French another construction. The discussions were broken off by the war of 1756. The treaty of Paris, of February 10, 1763, which terminated the war of 1756, ceded both Canada and Nova Scotia to the British, in full sovereignty. At this time, the power of the French became extinct, and they never made any subsequent effort to regain it. Until this period, although with the British, Nova Scotia had been the subject of grants, of conquests, and cessions, they always recognized the St. Lawrence as its northern boundary, never extending their claim beyond, or stopping short of it. When Canada became a territory of Great Britain, it became necessary for her to establish a government for it, and the King, for that purpose, by his Proclamation of the 7th of October, 1763, among other governments, established the government of Quebec, bounded as follows: "on the Labrador coast, by the river St. John, and from thence by a line drawn from the head of that river, through the lake St. John, to the south end of lake Nipissim, from whence the said line, crossing the river St. Lawrence, and the lake Champlain, in 45 degrees of north latitude, *passes along the high lands which divide the rivers that empty themselves into the said river St. Lawrence from those which fall into the sea*, and also along the north coast of the bay des Chaleurs, and the coast of the gulf of St. Lawrence to Cape Rosiers, and from thence, crossing the mouth of the river St. Lawrence, by the west end of the island Anticosti, terminates at the aforesaid river St. John."‡

* See Appendix No. 4

† Appendix No. 5.

‡ Appendix No. 6.

From this description it is evident that it was the intention of the crown, in establishing the province of Quebec, to embrace within its territory, after passing lake Champlain, the sources of all the streams which flowed into the St. Lawrence, and for that purpose, the most fit and appropriate words are adopted. It cannot be supposed that it was intended by this description, that the line, as it run eastward from lake Champlain, was to pursue a range of mountains, or to run from peak to peak of the highest mountains, between the river St. Lawrence on the one hand, and the Atlantic Ocean on the other: The line was the high lands, What high land? The high lands which divide the waters; any land, therefore, of any elevation, whether plains or mountains, hills or dales, which are at the sources of the respective rivers flowing into the St. Lawrence and the sea, are the high lands by the proclamation intended, and the most apt words are used to describe them. This line leaves all the waters of the Connecticut, Androscoggin, Kennebec, Penobscot, St. John and Ristigouche, falling into the sea, on one hand, and the streams flowing into the lake Memphremagog, and through it, into the river St. Lawrence, the Chaudiere, the Ouelle, Green, Metis, and many other rivers, falling into the river St. Lawrence, on the other. The line, it will be observed, pursues the northern coast of the bay of Chaleurs, and not the middle of the bay; there cannot be any pretence, therefore, that the river Ristigouche was within the meaning of this proclamation, a river flowing into the St. Lawrence, but, on the contrary, it is clearly a river falling into the Atlantic Ocean.

Prior to this proclamation, the provinces of Massachusetts Bay and Nova Scotia were bounded north by the river St. Lawrence; the proclamation varied the boundary by transferring it from the shores of the river St. Lawrence, to the sources of the rivers which emptied themselves into it; and the aforesaid provinces were then bounded north by the same line, to wit: the range of land, be what it might, high or low, in which the rivers respectively had their sources, leaving the rivers St. John and Ristigouche partly in the province of Massachusetts Bay, and partly in the province of Nova Scotia, the sources being in the former and the mouths in the latter province. This line has not since been altered, except between lake Champlain and Connecticut river, where, instead of pursuing the highlands, it was fixed to the parallel of 45 degrees north latitude.

*The line thus established by proclamation, has often since by the acts of the Crown and Parliament of Great Britain,

* See Appendix No. 8.

been recognized. October, 1763, in the commission to Montague Willmot, revoking the commission to a former governor, and constituting him to be Captain General and Commander in Chief of the Province of Nova Scotia, is the following description of boundary: "*Bounded on the westward by a line drawn from Cape Sable across the entrance of the bay of Fundy, to the mouth of the river St. Croix, by the said river to its source, and by a line drawn north from thence to the southern boundary of our Colony of Quebec; to the northward by the said boundary, as far as the western extremity of the bay des Chaleurs, &c.*"

* In the commission to William Campbell, in 1767, there is the same description of boundaries of the Province of Nova Scotia, and the same are again repeated in the commission to Francis Legge in 1771. The proclamation of 1763 was farther recognized and confirmed by the act of Parliament of the 14th of George III. by which it is enacted, "that all the territories, islands, and countries in North America, belonging to the crown of Great Britain, bounded on the south, by a line from the bay of Chaleurs, along the highlands which divide the rivers that empty themselves into the St. Lawrence, from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of Connecticut river."[†] The limits of the several provinces were the same at the time of concluding the treaty of 1783.

The question may well be asked, where was the northwest angle of Nova Scotia, and the northeast angle of the province of Massachusetts Bay, before the treaty? Had Nova Scotia two northwest angles? It has already been shown by the charter to Sir William Alexander, that the northwest angle of his grant was on the shore of the river St. Lawrence and although by the charter of William and Mary, in 1691, it became a part of the province of Massachusetts Bay, when it was afterwards separated from it, its boundaries were the same as before, and its northwest angle still on the shores of the St. Lawrence. Here the angle remained fixed and stationary until 1763, when the boundaries were transferred from the shore to the land from which the streams falling into the river St. Lawrence flowed and had their source.—Nova Scotia had therefore but one northwest angle. Here the line became fixed and permanent, and on this line, and to the northward of the heads of all the streams which did not flow into the river St. Lawrence, was the northwest angle of Nova Scotia.

When the boundaries between the provinces of Quebec and Massachusetts Bay, were thus clearly defined and limited

* See Appendix No. 9.

† Appendix No. 10.

to that range of lands in which the streams falling into the St. Lawrence at the northward, and the St. John at the southward, and continued easterly to the head of the bay of Chaleurs, and southwestwardly to the head of Connecticut river; and when the boundary between the provinces of Nova Scotia and Massachusetts Bay were thus clearly defined and limited to the river St. Croix, and a line drawn north from it to the aforesaid range of land, the boundary of the government of Quebec; the repeated acts of arbitrary power exercised by Great Britain towards the provinces comprising the thirteen United States, caused them to assert their rights; they maintained them successfully; and to terminate the unprofitable struggle, Great Britain acknowledged their existence as an independent nation. When their existence as an independent nation was thus secured, it became necessary for the two nations, to prevent new and unprofitable contests, to fix and establish boundaries between themselves. This was first done in the provisional articles of peace concluded at Paris, November 30, 1782, and by the provisions of that instrument, were incorporated into, and became a part of the definitive treaty of Peace concluded at Paris, September 3d, 1783.

The acknowledgement of independence, and the boundaries established, are described as follows, to wit:—

“Article 1st. His Britannic Majesty acknowledges the said United States, to wit: New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free, sovereign and independent States; and that he treats with them as such; and for himself, his heirs and successors, relinquishes all claims to the government, propriety, and territorial rights of the same and every part thereof. And that all disputes which might arise in future on the subject of the boundaries of the said United States may be prevented, it is hereby agreed and declared that the following are and shall be their boundaries, to wit:

“Article 2. *From the northwest angle of Nova Scotia, to wit, that angle which is formed by a line drawn due north from the source of the St. Croix river to the highlands, along the said highlands which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut river, thence down along the middle of that river, to the forty fifth degree of north latitude; from thence, by a line due west on said latitude, until it strikes the river Iroquois, or Cataraugy; thence along the middle of said river into lake Ontario, through the middle of said lake, until*

it strikes the communication by water between that lake and lake Erie; thence along the middle of said communication, into lake Erie, through the middle of said lake, until it arrives at the water communication between that lake and Huron; thence along the middle of said water communication between that lake and lake Superior; thence through lake Superior, northward of the isles Royal and Philipeaux, to the Long lake; thence through the middle of said Long lake, and the communication between it and the lake of the Woods, to the said lake of the Woods; thence through said lake to the most north-western point thereof; and from thence on a due west course to the river Mississippi; thence by a line to be drawn along the middle of the said river Mississippi, until it shall intersect the northernmost part of the thirty first degree of north latitude. South, by a line to be drawn due east from the termination of the line last mentioned, in the latitude of thirty one degrees north of the equator, to the middle of the river Apalachicola or Catalouche; thence along the middle thereof to its junction with the Flint river; thence straight to the head of St. Mary's river; thence down along the middle of St. Mary's river to the Atlantic Ocean. *East, by a line to be drawn along the middle of the river St. Croix, from its mouth in the bay of Fundy to its source, and from its source directly north, to the aforesaid high lands, which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence, comprehending all islands within twenty leagues of any part of the shores of the United States, and lying between the lines to be drawn due east from the points where the aforesaid boundaries between Nova Scotia on the one part, and East Florida on the other, shall respectively touch the bay of Fundy, and the Atlantic Ocean, excepting such islands as now are, or heretofore have been within the limits of the said province of Nova Scotia."*

The first article describes, by name, the several States composing the United States, and had the treaty stopped here without describing their boundaries more minutely, there could have been no doubt but that all the territory embraced within the charter limits, or within the jurisdiction of Massachusetts Bay, passed by that description. Here, from the use of the term Massachusetts, was an evident intention to conform to the lines as they existed before the treaty, which have been already shown, from the documents herein before cited, which are of that clear and explicit character which relieves the subject from all uncertainty and doubt.

But when the subject is still farther pursued and the boundaries are more minutely described, what was clear before, is still made more clear and explicit. To be more particular,—

The northwest angle of Nova Scotia, after it is ascertained by the rule given in the treaty, is the point from which the northern line starts. "From the northwest angle of Nova Scotia, to wit—that angle which is formed by a line drawn due north from the source of the river St. Croix to the high lands."—Here we may ask what angle was intended? Was it an angle to be formed on the side line of the province one hundred or more miles from the real and true northwest angle of Nova Scotia; or was the real and true angle of the province, at the point where its western line intersected the line of the province of Quebec? The true construction is too obvious to admit a doubt. It is perfectly clear from the plain and most natural and obvious construction of the language used, that by the northwest angle of Nova Scotia was truly intended the northwestern extremity of that province.

The description then proceeds, "along the said highlands which divide those rivers that empty into the river St. Lawrence from those which fall into the Atlantic Ocean." The idea that the words of the treaty require a range of mountains to form the line, is totally false and absurd. If the commissioners intended to describe a line pursuing the highest range of mountains between the Atlantic on the one hand, and the river St. Lawrence on the other, they would have used the terms fittest for such description, and not have used the words which plainly and distinctly were intended to embrace any height of land, from the lowest, to any other elevation, provided it did divide the waters falling into the river St. Lawrence from those falling into the Atlantic Ocean. If mountains were found there, they were intended, if there were no mountains or hills, and the lands only ascended gently from the river St. Lawrence, and again descended towards the main streams falling into the Atlantic, constituting in fact a long and extended plain, from the highest parts of which the streams run northwardly and westwardly into the river St. Lawrence, and southerly and easterly into the Atlantic—such a plain is the highland truly intended by the treaty, and the line is on that part of the plain from which the waters flow in different directions—If the lands are only high enough for the water simply to pass off in different directions, as completely and exactly corresponds with the description in the treaty, and are the highlands truly and eminently intended by it.

The treaty describes but two classes of rivers, as having any connexion with this part of the boundaries of the United States, to wit—such as flow into the river St. Lawrence, and those which fall into the Atlantic. Although the river Saint Lawrence itself falls into the Atlantic Ocean, it is alluded to in a peculiar manner, to distinguish it from all *other rivers*, and

to place it and its tributary streams in opposition to *them*, whether they flowed into Long Island Sound, Kennebec Bay, Penobscot Bay, the great Massachusetts Bay, the Bay of Fundy or the Bay of Chaleur—or into any other part of the Atlantic Ocean. The language of the treaty being thus clear and explicit, it leaves no doubt on the mind, that the highlands of the treaty which divide the waters, was intended that range of lands, whether high or low, in which the tributaries of the St. Lawrence have their sources and from which they flow. To search, therefore, for mountain ranges, or for the greatest height of land, between the river St. Lawrence and the Atlantic Ocean, to fulfil the terms of the treaty, is absurd and preposterous. In the latter part of the article quoted, in describing the east boundary, the descriptive language of the first part of the article is nearly repeated. “East by a line to be drawn along the middle of the river St. Croix, from its mouth in the Bay of Fundy to its source, and from its source directly north to the aforesaid highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the river St. Lawrence.”

Although, from the French having erected their crosses at the mouths of various rivers, and having at various times given them names from that circumstance, and the part of the country between the rivers St. John and Penobscot not having been early settled, and seldom visited except for the purpose of traffic with the natives, doubts reasonably might arise as to the true river St. Croix, still, when those doubts were removed, and the river clearly ascertained, a certain point was fixed, from which the due north line was to start, and nothing remained but to employ artists to survey the line and erect its monuments. This seems to have been a point conceded in the treaty of amity, commerce and navigation, concluded at London, Nov. 19, 1794, and in all the discussions under the fifth article thereof.

Upon the clear and explicit language of the treaty itself, before any intelligent and impartial tribunal, the question of boundary and jurisdiction might be safely placed, with a perfect confidence in the issue. But the treaty, though definite in its descriptions, and requiring no foreign aid in its interpretation, only adopted the boundaries of provinces which had been defined, established and recognised by the crown and government of Great Britain, in their different acts from 1621 to 1775, which will appear by a recurrence to the descriptive language contained in the patents, charters, proclamations, and acts of parliament, before quoted, and nearly in the same language. There can, therefore, be no doubt, that the minis-

ters of both governments, intended to adopt, and did adopt, in the treaty of peace, as the boundary of the United States, the boundaries between the provinces of Quebec and Nova Scotia on the one part, and Massachusetts on the other part, which had been established by, and had long been familiar to the government of Great Britain. This construction, if any further support were necessary, is amply and fully supported by the discussions, which led to, and the manner in which the boundaries were concluded by the ministers who negotiated the provisional treaty of peace. The negotiation was carried on in form, with Mr. Oswald, who advised with Mr. Fitzherbert, the minister to the Court of Versailles, but in fact with the British Cabinet. Mr. Oswald did little or nothing more, not having authority, than to make such propositions as the British Cabinet, from time to time, according to circumstances, commanded, and receive such as our ministers made, until near the close of the discussion, when he was clothed with full powers.

A provision in favor of the loyalists, was long and ardently urged by the British, and as ardently resisted by our ministers—the right to the fisheries was urged and insisted on by our ministers, and made a *sine qua non* by a part, and resisted by the British, but finally adopted, both of which topics occupied much time. The fixing and defining the boundaries of the United States also occupied much time, and no part or portion of it was so dilligently examined and discussed, as the eastern and northern boundaries of the present State of Maine. The British in the first place insisted upon Piscataqua river as the eastern limit of the United States, then retreated to the Kennebec, and as a last resort would consent to go as far as the Penobscot. During this, as during the other parts of the discussion, messengers were continually crossing and recrossing the channel; among the messengers and aids to the British, the ancient clerk of the board of trade and plantations appeared with volumes of records from that department, from which he read whatever there was which tended to show the District of Maine, or any part of it, was not before that time within the jurisdiction of Massachusetts Bay. The American ministers in their turn produced sundry acts of the colonial government of Massachusetts Bay, shewing the jurisdiction which had been exercised by her, the report of the attorney and solicitor generals who had upon the matter being referred to them, decided upon the sundry petitions, applications, and claims made for all the country between the Sagadahock (Kennebec,) and St. Croix, and their decision, after examining all the evidence, was against them, and in favor of the jurisdiction

of Massachusetts Bay. Also Governor Hutchinson's report wherein the right of Massachusetts Bay is discussed, and a volume of the doings of the Commissioners at Paris.

When the British insisted upon limiting the United States to the Piscataqua, the Kennebec, or the Penobscot, the ministers of the United States, or some of them insisted upon going to the St. John, but finally agreed to adhere to the charter of Massachusetts Bay. That they did do that, most manifestly appears from a comparison of the treaty with the patents, charters, proclamations, and acts of parliament herein before quoted.

That it was the intention of the commissioners to adopt the boundaries between the provinces of Quebec and Nova Scotia on the one part, and Massachusetts Bay on the other part, was expressly conceded and admitted on the part of the British in the discussions under the fifth article of the treaty of 1794.—It even, if possible, was more than admitted, it is one if not the chief basis of the whole argument, and was enforced with great ability.

The British agent in his memorial of claim says, "by the said 2d article herein before cited, of the treaty of peace, it appears to be clearly intended, that no part of the province of Nova Scotia should be thereby ceded by his said Majesty to the said United States. But that the same province of Nova Scotia, according to its ancient and former limits, should be and remain a part of the territory of his said Majesty, as his said Majesty then and before that time had held and possessed the same." Again in his argument he says, "to facilitate the investigation of the present question there appears to be one leading principle that appears to be explicitly established by the very terms of the treaty of peace, and which might indeed be fairly considered as an axiom in the present discussion, to wit—*That it was clearly intended by the second article of the treaty that no part of the province of Nova Scotia should be thereby ceded by his Majesty to the United States.* The words made use of in that article will not admit of a different construction, the United States being expressly bounded east by the eastern boundaries of the province of Nova Scotia. The description of the treaty in this part of the boundaries of the United States is as follows: "From the northwest angle of Nova Scotia, to wit, that angle which is formed by a line drawn due north from the source of the St. Croix to the highlands which divide those rivers that empty themselves into the St. Lawrence from those which fall into the Atlantic Ocean." Now if the northwest angle of Nova Scotia, agreeable to these clear and express words of the treaty, is formed by such a north line from the

source of the St. Croix to the highlands, that north line and those highlands must be the western and northern boundary of Nova Scotia.

And the British agent in pursuing his argument further, says, that by the treaty of 1763, "all the French possessions upon the continent of North America were ceded to Great Britain; the province of Quebec was created and established by the royal proclamation of the 7th of October of that year, bounded on the south by the highlands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the *Sea or Atlantic Ocean*, thereby altering the northern boundary of the province of Nova Scotia from the southern shores of the river St. Lawrence to those highlands, there being no longer any apprehension of disturbance from the French, it now became necessary for the settlement of the country that had been in dispute between the two nations to ascertain the boundary line between the provinces of Nova Scotia and Massachusetts Bay."

Having quoted in the preceding pages the main documents on which our title rests, there will not, in the sequel, be a necessity for any thing more than general allusions. By a recurrence to the history of that time, it will be seen that the treaties were opposed in the British parliament, but they were opposed by those who had lately been in power, and opposition to the ministry seems to have constituted the leading objection; so far as the treaty with the United States came in question the objections raised were on account of there being no provision in favor of the loyalists, and the right to the fisheries being secured to the United States, but there was no objection to it on account of the boundaries therein prescribed to the northeastern part of the United States. If the boundaries had not been such as were well known and familiar from their own records, the variance would have produced scrutiny, and if any objection could have been raised against it, on that account, it would have been brought forward to increase and enforce their other objections.

When the river St. Croix had been consecrated by De Monts in 1604, and by its being the first resting place of Europeans, who became permanent settlers in the northern parts of North America; and when, from that circumstance, and from the expedition of Sir Samuel Argall, its name found its way across the Atlantic, yet from the imperfect geographical knowledge at that time, the position of it could not have been known to the Europeans, and when, in the prosecution of the settlement of the country, other places became more alluring,

and the river St. Croix and the country on its borders did not become the site of any settlement or military post, and the natives were there left to pursue their fisheries and the chase without molestation, and when, also, many other rivers on the coast were afterwards designated by the same name, and when all the maps prior to the American Revolution were imperfect, it is not wonderful that doubts, and serious doubts arose as to which river was intended as the boundary between the province of Massachusetts Bay and the province of Nova Scotia. Hence, as the river St. Croix was a part of the boundary between the provinces, when the settlements on the coast began to approach each other, it became necessary to ascertain the river truly intended, to prevent collision and the conflict of jurisdiction.

Before the American Revolution, and as early as the year 1764, it had become the object of the serious research and investigation of the respective provinces. From the researches of the agents of the province of Massachusetts Bay, made on the spot, from the concurrent information of all the natives, and from all the maps in their possession, they were convinced that the river Magaguadavic was the river St. Croix, such was the tradition, and such was the conclusion.

It generally was considered and believed in the province of Massachusetts bay, that it was bounded east by the river Magaguadavic and by a line drawn due north from its source to the highlands which divide the rivers that empty themselves into the St. Lawrence from those which fall into the sea, or in other words, by a line drawn due north from the source of the said Magaguadavic river to the southern line of the province of Quebec, which had, by proclamation, been created the preceding year. The province of Nova Scotia on the other hand, believed, that the province extended westward to the river Schoodic, and was bounded west by the east line of the province of Massachusetts Bay, and north by the aforesaid south line of the province of Quebec. Impressed with such a belief, the Governor of Nova Scotia, as the settlements extended westward, and individuals wished for grants of land made them, and from the year 1765 to 1774, made sundry grants of land, lying between the Magaguadavic and the Schoodic Rivers.

Such were the different opinions entertained at the commencement of the revolution, and such they continued to be, when the provisional treaty and the treaty of peace were concluded. When the provinces were cut asunder, and ceased to be under the control of the same general sovereignty, and after the close of the war, the loyalists settled

on the eastern banks of the Schoodic, and extended their settlements between that, and the Magaguadavic rivers, under the grants of the province of Nova Scotia or the crown. The attention of Massachusetts was aroused, and called distinctly to the subject, and the government, July 7, 1784 passed a "Resolve for appointing Agents to the eastern part of this State, to inform themselves of encroachments made by the British subjects;" and instructing them how to proceed. The Agents were appointed, repaired to the place where the dispute existed, viewed the rivers, and made all such other enquiries as were within their power, and became convinced that the river Magaguadavic was the river St. Croix, of the treaty of 1783. In answer to enquiries made by the Lieutenant Governor of Massachusetts, dated Auteuil, near Paris, October 25, 1784, the late John Adams, one of the negotiators of the provisional, and the treaty of peace, says "We had before us, through the whole negotiation, a variety of maps, but it was Mitchell's map upon which was marked out the whole boundary line of the United States; and the river St. Croix, which was fixed on, was, upon that map, the nearest to the St. Johns, so that in all equity, good conscience and honor, the river next to the St. John's, should be the boundary. I am glad the General Court are taking early measures and hope they will pursue them steadily until the point is settled, which it may be now amicably; if neglected long, it may be more difficult." Massachusetts became confirmed in her claim, as her enquiries and researches were extended. She pressed her claim upon the consideration of Congress, and upon the consideration of the governors of Nova Scotia and New-Brunswick. Representations were made by Congress to the government of Great Britain, through the minister of the United States.

The different parties so far from settling the difficulties, probably became more and more confirmed in their different opinions. After the organization of the government of the United States under the constitution, by a resolve passed Feb. 1, 1790, it was "Resolved, that his excellency the Governor be, and he hereby is requested to write to the President of the United States, in behalf of this commonwealth, informing him that the subjects of his Britannic Majesty have made, and still continue to make encroachments on the Eastern Boundary of this commonwealth, in the opinion of the legislature contrary to the treaty of peace; and that his excellency be requested to forward such documents as may be necessary to substantiate the facts." Thus Massachusetts called on the government of the United States, to protect them in the possession of their territory.

The doubts which had arisen, extended no farther than to what river was intended by the river St. Croix in the treaty of 1783; the treaty only describing it by its name, nor could they, for when that was settled the rule was clearly and distinctly given for finding the northwest angle of Nova Scotia. That is clearly implied in the first part of the fifth article of the treaty of 1794; for it says, "Whereas doubts have arisen what river was truly intended under the name of the river St. Croix, mentioned in the said treaty of peace, and forming a part of the boundary therein described, that question shall be referred to the final decision of commissioners." The same article made it the duty of the commissioners, "by a declaration under their hands and seals, to decide what river was the river St. Croix intended by the treaty, and further to describe the river and to particularize the latitude and longitude of its mouth and its source." If any other doubts could have existed, or if the residue of the line could not have been ascertained by a survey, or if it had not been considered that ascertaining the river St. Croix settled the whole dispute, and if such were not the convictions of the contracting parties, it is not unreasonable to suppose, that further provisions would have been introduced into the treaty.

It was contended by the agent of the United States before the commissioners, that the river Magaguadavic was the river St. Croix truly intended by the treaty of 1783, and he founded his claim and argument on many depositions of the natives, and of the persons who first settled in that part of the country, on the examination and reports of agents on the letters and testimony of several other persons and on sundry maps.

It was contended by the agent for his Britannic Majesty, that the river Scoudiac was the river St. Croix truly intended by the treaty of 1783, and he founded his argument on the grant to Sir William Alexander, Les Carbot and Champlain's histories of the voyages of De Monts, and their description of the country, the commissions to Governors of Nova Scotia, from 1719 to 1771, the proclamation of 1763, and two acts of parliament of the fourteenth of George 3d, and sundry maps* and depositions. His argument and the facts and documents upon which he founded it, clearly admits and demonstrates, that the only uncertainty was, as to what river was intended by the river St. Croix, and that from the source of the river which the commissioners should decide and designate according to the treaty of 1794, the eastern boundary line of the United States and the western boundary of the province of Nova Scotia must commence and continue due north to the

* See Appendix 10.

highlands, to wit : the highlands between the river St. Lawrence and the Restigouche or the St. John, according as the source should be fixed further east or further west. He expressly admits that the line due north from the St. Croix will, in any event, cross the river St. John to the highlands, between that and the river St. Lawrence, to wit : the lands which divide the streams which flow into the St. Lawrence from those which fall into the Atlantic.*

The discussion was closed in 1798, and the time had not then arrived, when from "*cupidity*," or a desire to establish a line from which they could attack the United States in the rear, while their navy should attack them on the sea board, when they were determined to acquire by effrontery or sophistry the territory, which they had sought in vain as a cession.

The commissioners on the 25th of October, 1798, made the declaration under their hands and seals, deciding what, and describing the river also, which was truly intended by the river St. Croix, in the treaty of 1783.† Prior, however, to their making their final declaration, they had agreed, and were about making it the final declaration, that the river Schoodic, from its mouth at Joes Point to the lake Genesagranagum-sis, now called the Round lake, being the lowest of the western Schoodic lakes, was the river St. Croix of the treaty ; which declaration they did not make, but by the agreement or consent of the agents of the United States and Great Britain, and the advice of the British Minister.‡ They adopted the branch called the Cheputnetecook, to its source, as a part of the river which they were to decide and designate. If the British government gained no advantage in the decision of the commissioners, as, from the evidence submitted, the commissioners might well have decided that the Magaguadavic was the river St. Croix intended by the treaty, they did in fact gain a most decided and important advantage in the adoption of the source of the Cheputnetecook, instead of the source of the other branch of the Schoodic river, where it issues from the lake Genesagranagum-sis, being the first lake on the western branch of the Schoodic, above its junction with the Cheputnetecook. By an inspection of the map, it will appear that the British have gained a tract of land, by a change of the declaration of the commissioners, as to the source of the river St. Croix, of more than one hundred and forty miles in length, by more than ten miles in breadth. These facts are not named, because there is any disposition, on our part, to violate the good faith pledged in the treaty, and the decision which was thus amicably made. The British, if they be, as they

* See Appendix No. 11.

† Appendix No. 12.

‡ Appendix No. 13.

declare themselves to be, "a great, honorable, and magnanimous nation," ought equally to abide the decision and its consequences, in good faith, more especially as they gained so much by the result. Here every real doubt or difficulty of any importance was settled and removed; and nothing remained but to run and mark the line, and erect its monuments. Trifling differences in surveying the line might occur, arising from the variation of the needle, and from the peculiar situation of the land on the line of the government of Quebec, at the northwest angle of Nova Scotia, one of which would tend to change the longitude, and the other the latitude of the angle possibly a mile; but not in any instance to a distance of any importance to either government. Some trifling differences might also arise in surveying the line between the government of Quebec and Massachusetts, in running the line southwesterly from the northwest angle of Nova Scotia, as to the precise points which divide the waters, and the lines which should connect those points; but all such differences are within a very narrow compass. That the only subject of doubt or difficulty, of any importance was what river was truly intended by the river St. Croix, is not only conceded by the treaty of 1794, but is demonstrated by the documentary evidence produced by the Agent of his Britannic Majesty, to wit, the patents, charters, proclamations, and acts of Parliament, and his arguments founded upon these documents; his argument being in fact, founded upon this plain and simple proposition, that the lines described by the treaty of 1783, were, and were intended to be, the lines which had before been established, between the province of Massachusetts Bay, on the one hand, and the provinces of Quebec and Nova Scotia on the other.*

When the subject is again recurred to by the respective governments, it is not treated as a subject involving any thing more than possible difficulties of trifling importance. Hence in a convention between his Britannic Majesty and the United States, which was dated the 12th day of May, 1803, but which was not ratified by the United States, instead of reciting, that whereas doubts have arisen, &c. as in the treaty of 1794, says, "Whereas it has become expedient that the northwest angle of Nova Scotia, mentioned and described in the treaty of peace between his Majesty and the United States, should be ascertained and determined, and that the line between the source of the river St. Croix, and the said northwest angle of Nova Scotia, should be run and marked, according to the provisions of the said treaty of peace." And

* See Appendix No. 11.

again, when the subject is recurred to, in a paper delivered to Lord Harrowby, September 5th, 1804, the following language is used: "By the treaty of 1783, between the United States and Great Britain, the boundary between those States and Nova Scotia and Canada, is fixed by a line, which is to run along the highlands bounding the southern waters of the St. Lawrence." The same subject is once more recurred to by our Ministers at the Court of St. James, in April, 1807, and the same language is used in a proposed article on the same subject, as was used in the unratified convention of 1803, before recited.

The subject is not again recurred to between the respective governments until 1814, in the correspondence which preceded, and in the fifth article of the Treaty of Ghent. In order to arrive at a full and perfect knowledge of the facts, to the end that the just and true interpretation of the fifth article of the Treaty of Ghent may more fully appear, a particular examination of the correspondence which preceded it, between the ministers of the respective governments of the United States and Great Britain, connected with the great chain of evidence of title, and implied, and direct, and positive concessions of the British, is deemed important. The correspondence touching the subject in discussion is as follows:

In the protocol made by the American Commissioners of the two first conferences held with the British Commissioners, the third point presented by the Commissioners on the part of the British as subjects of discussion, is, "the revision of the boundary line between the *territories* of the United States and those of Great Britain adjoining them in North America."*

In the protocol of conference of August 8, 1814, among the subjects stated for discussion by the British Commissioners the third is "A revision of the boundary line between the British and American territories with a view to prevent future uncertainty and dispute."†

In a letter dated Ghent August 12, 1814, from the American Commissioners to the Secretary of State,‡ the British Commissioners stated three subjects as those upon which it appeared to them that the discussions would be likely to turn, and on which they were instructed. The third subject stated is "A revision of the boundary line between the United States and the adjacent British Colonies." With respect to this point, they expressly disclaimed any intention, on the part of their government, to acquire an increase of territory, and represented the proposed revision as intended merely for the purpose of preventing uncertainty and dispute. In a letter

* State Papers, vol 9, p. 327. † *Ib.* 330. ‡ *Ib.* 320.

dated Ghent, August 19, 1814, from the American Commissioners to the Secretary of State, the third subject stated by the British Commissioners is "A direct communication from Halifax and the province of New-Brunswick to Quebec to be secured to Great Britain." In answer to our question, in what manner this was to be effected? we were told, "that it must be done by a *cession* to Great Britain of that portion of the District of Maine, (in the State of Massachusetts) which intervenes between New-Brunswick and Quebec, and prevents their direct communication."*

In a note of the British Commissioners dated Ghent, August 19, 1814, they say, "as they are desirous of stating every point in connexion with the subject, which may reasonably influence the decision of the American plenipotentiaries in the exercise of their discretion, they avail themselves of this opportunity to repeat what they have already stated, that Great Britain *desires the revision of the frontier between her North American dominions and those of the United States, not with any view to an acquisition of territory, as such, but for the purpose of securing her possessions, and preventing future disputes.*"†

Then follows a proposition that the military possession of the lakes shall be left in the hands of the British; then the note proceeds, "if this can be adjusted, there will then remain for discussion the arrangement of the northwestern boundary between lake Superior and the Mississippi, the free navigation of that river, and such a *variation of the line of frontier as may secure a direct communication between Quebec and Halifax.*"

In a letter dated Ghent, August 24, 1814, from the American to the British Commissioners, they say—"The undersigned further perceive, that under the alleged purpose of opening a direct communication between two of the British provinces in America, the British government require a *cession of territory forming a part of one of the States of the American Union*, and that they propose, without purpose specifically alleged, to draw the boundary line westward, not from the Lake of the Woods, as it now is, but from Lake Superior. It must be perfectly immaterial to the United States, whether the object of the British Government in demanding the dismemberment of the United States, is to acquire territory as such, or for purposes less liable in the eyes of the world, to be ascribed to the desire of aggrandizement. Whatever the motive may be, and with whatever consistency views of conquest may be disclaimed, while demanding for herself or for the Indians, a cession of territory more extensive than the whole island of Great Britain, the duty marked out for the undersigned is the

* State Papers, vol 9, p. 332.

† Ib. 339.

same. They have no authority to *cede any part of the territory of the United States*; and to no stipulation to that effect will they subscribe."*

In a letter dated Ghent, September 4, 1814, from the British to the American Commissioners, they say, "With respect to the boundary of the District of Maine, and that of the north-western frontier of the United States, the undersigned were not prepared to anticipate the objections contained in the note of the American Plenipotentiaries, that they were instructed to treat for the revision of their boundary lines, with the statement which they have subsequently made, that they had *no authority to cede any part however insignificant of the territories of the United States, although the proposal left it open for them to demand an equivalent for such cession in territory or otherwise.*"

"The American plenipotentiaries must be aware that the boundary of the District of Maine has never been correctly ascertained; that the one asserted at present by the American Government, by which the direct communication between Halifax and Quebec becomes interrupted, was not in contemplation of the British plenipotentiaries who concluded the treaty of 1783, and that the *greater part of the territory in question is actually unoccupied.* The undersigned are persuaded that an arrangement on this point might be easily made, if entered into with the spirit of conciliation, without any prejudice to the interests of the district in question. As the necessity for fixing some boundary for the northwestern frontier has been mutually acknowledged, a proposal for a discussion on that subject cannot be considered as a demand for a cession of territory, unless the United States are prepared to assert, there is no limit to their territories in that direction, and that availing themselves of the geographical error upon which that part of the treaty of 1783 was founded, they will acknowledge no boundary whatever, then, unquestionably, any proposition to fix one, be it what it may, must be considered as demanding a large cession of territory from the United States."†

In a letter dated Ghent, September 9, 1814, from the American to the British Commissioners, the American Commissioners say—"With regard to the *cession* of a part of the District of Maine, as to which the British plenipotentiaries are unable to reconcile the objections made by the undersigned, with their previous declarations, they have the honor to observe, that at the conference of the 8th ult. the British plenipotentiaries stated, as one of the subjects suitable for discussion, a revision of the boundary line between the British and American territories, with a view to prevent uncertainty

* State Papers, vol. 9, p. 381.

† *Ib.*

and dispute: and that it was on the point thus stated, that the undersigned declared that they were provided with instructions from their government; a declaration which did not imply that they were instructed to make any *cession* of territory, in any quarter, or to agree to a revision of the line, or to any exchange of territory where no uncertainty or dispute existed.

“The undersigned perceive no uncertainty or matter of doubt in the treaty of 1783, with respect to that part of the boundary of the District of Maine which would be affected by the proposal of Great Britain on that subject. They never have understood that the British plenipotentiaries who signed that treaty had contemplated a boundary different from that fixed by the treaty and which requires nothing more, in order to be definitely ascertained, than to be surveyed in conformity with its provisions. *This subject not having been a matter of uncertainty or dispute*, the undersigned are not instructed upon it; and they can have no authority to cede any part of the State of Massachusetts, even for what the British Government might consider a fair equivalent.”*

In a letter dated Ghent, September 19, 1814, from the British to the American Commissioners, they say, —“With respect to the boundary of the District of Maine, the undersigned observe with regret, that although the American plenipotentiaries have acknowledged themselves to be instructed to discuss a revision of the boundary line, with a view to prevent uncertainty and dispute, yet by assuming an *exclusive right at once to decide what is or is not a subject of uncertainty and dispute*, they have rendered their powers nugatory or inadmissably partial in their operation †

In a letter dated Ghent, September 26, 1814, from the American to the British Commissioners, they say, “The undersigned are far from assuming the exclusive right to decide *what is, or what is not a subject of uncertainty or dispute*, with regard to the boundary of the District of Maine. But until the British plenipotentiaries shall have shewn in *what respect the part of that boundary which would be affected by their proposal, is such a subject*, the undersigned may be permitted to assert that it is not.”

The treaty of 1783 described the boundary as “a line to be drawn along the middle of the river St. Croix from its mouth in the Bay of Fundy, to its source, and from its source directly north to the highlands which divide the rivers that fall into the Atlantic Ocean from those which fall into the river St. Lawrence, and thence along the said highlands to the north-westernmost head of Connecticut river.” “Doubts having

* State Papers, vol. 9, p. 398.

lb. p. 400.

arisen as to the St. Croix designated in the treaty of 1783, a provision was made in that of 1794, for ascertaining it; and it may be fairly inferred, from the limitation of the article to that sole object, that, even in the judgment of Great Britain, no other subject of controversy existed in relation to the extension of the boundary line from the source of that river. That river and its source having been accordingly ascertained the undersigned are prepared to *propose the appointment of commissioners by the two governments, to extend the line to the highlands, conformably to the treaty of 1783.* The proposal, however, of the British plenipotentiaries *was not to ascertain, but to vary those lines, in such a manner as to secure a direct communication between Quebec and Halifax; an alteration which could not be effected without a cession by the United States to Great Britain of all that portion of the State of Massachusetts intervening between the province of New Brunswick and Quebec, although unquestionably included within the boundary lines fixed by that treaty.* Whether it was contemplated on the part of Great Britain to obtain a *cession* with or without an equivalent in frontier or otherwise, the undersigned, in stating that they were not instructed or authorized to treat on the subject of *cession*, have not declined to discuss any matter of *uncertainty or dispute which the British Plenipotentiaries may point out to exist*, respecting the boundaries in that or any other quarter, and are, therefore, not liable to the imputation of having rendered their powers on the subject nugatory, or inadmissibly partial in their operation.”*

In a letter dated Ghent, October 8, 1814, from the British to the American Commissioners, they say, “The British government never required that all that portion of Massachusetts intervening between the province of New Brunswick and Quebec, should be ceded to Great Britain, but only that small portion of *unsettled country* which interrupts the communication between Halifax and Quebec, (there being much doubt whether it does not already belong to Great Britain.”)† In the letter dated Ghent, Oct. 21, 1814, from the British to the American Commissioners, they say, “On the question of boundary between the dominions of his Majesty and those of the United States, the undersigned are led to expect, from the discussion which this subject has already undergone, that the northwestern boundary from the lake of the Woods to the Mississippi, (the intended arrangement of 1803,) will be admitted without objection.

“In regard to other boundaries the American plenipotentiaries, in their note of August 24, appeared, in some measure to

* State Papers, vol. 9, p. 405]

† Ib. p. 415.

object to the proposition then made by the undersigned, as not being on the basis of *uti possidetis*. The undersigned are willing to treat on that basis, subject to such modifications as mutual convenience may be found to require; and they trust that the American Plenipotentiaries will shew, by their ready acceptance of this basis, that they duly appreciate the moderation of his Majesty's government, in so far consulting the honor and fair pretensions of the United States as, in the relative situation of the two countries to authorize such a proposition."*

In a letter dated Ghent, October 24, 1814, from the American to the British Commissioners they say, "Amongst the general observations which the undersigned in their note of Aug. 24th, made on the propositions then brought forward on the part of the British government, they remarked, that those propositions were neither founded on the basis of *uti possidetis*, nor that of *status ante bellum*. But so far were they from suggesting the *uti possidetis* as the basis on which they were disposed to treat, that in the same note they expressly stated, that they had been instructed to conclude a peace on the principle of both parties restoring whatever territory they might have taken. The undersigned also declared in that note, that they had no authority to *cede* any part of the territory of the United States, and that to no stipulation to that effect would they subscribe: and in the note of the 9th of September, after having shewn that the basis of *uti possidetis*, such as it was known to exist at the commencement of the negotiation, gave no claim to his Britannic Majesty to cessions of territory, founded upon the right of conquest, they added, that even if the chances of war should give to the British arms a momentary possession of other parts of the territory of the United States, such events would not alter their views with regard to the terms of peace to which they would give their consent.

"The undersigned can only now repeat those declarations, and decline treating upon the basis of *uti possidetis* or upon any other principle involving a cession of any part of the territory of the United States, as they have uniformly stated, they can only treat upon the principle of a mutual restoration of whatever territory may have been taken by either party. From this principle they cannot recede, and the undersigned, after the repeated declarations of the British Plenipotentiaries, that Great Britain had no view to the acquisition of territory in this negotiation, deem it necessary to add, that the utility of its continuance depends on their adherence to this principle."†

In a letter dated Ghent, October 25, 1814, from the American Commissioners to the Secretary of State, they, after sta-

* State Papers, vol. 9, p. 427.

† *Ib.* p. 428.

ting that an article had been reduced to writing, securing merely an Indian pacification, had been agreed to be accepted, subject to the ratification or rejection of the government of the United States, say, "But will perceive that our request for the exchange of a project of a treaty has been eluded, and that in their last note, the British Plenipotentiaries have advanced a demand, not only new and inadmissible, but totally incompatible with their uniform previous declarations, that Great Britain had no view in this negotiation to any acquisition of territory." It will be perceived, that this new pretension was brought forward immediately after the accounts had been received that a British force had taken possession of all that part of the State of Massachusetts situated east of Penobscot river.

It having been shewn, in the first part of this report, what the lines between Massachusetts and Nova Scotia, and Massachusetts and the province of Quebec, as formed and established by the government were, prior to the provisional treaty, and the definitive treaty of peace of 1783, and the investigation which took place, and the care and diligence with which the subject was examined, by the commissioners of both governments, and the cabinet of Great Britain, and that it was the intention of both governments, to adopt the lines above mentioned, as a part of the boundary of the United States, and that the treaty itself, in describing the boundary, contains almost the precise language which the British had often used in relation to the same lines; it having also been shewn that the only difficulty in relation to the line arose from the uncertainty as to what river was truly intended by the river St. Croix, and which uncertainty arose from facts and circumstances which existed long before, and at the time of concluding the treaties, and which were not removed by the treaty, in consequence of the river St. Croix not being designated with any more particularity, than it was before, in the patents, charters, acts of Parliament, and documents, in which it had been mentioned; and also, that in the discussions on the subject between the governments of the United States and Great Britain, it had been admitted, more especially by the agent for the latter that let the commissioners designate what river they would as the river St. Croix, truly intended by the treaty of peace, from the source of that river the line run due north to the highlands, the southern line of the government of Quebec, and the northern line of Massachusetts, and the province of Nova Scotia, and in any event even, if they adopted the most western point, which he

* State Papers, vol. 9. p. 75.

described as the head of the river St. Croix, the line running north, must cross the river St. John to the highlands dividing the waters which fall into that river, from those which fall into the river St. Lawrence.*

It also having been further shown, that since 1798, when the river St. Croix was designated by the Commissioners under the treaty of 1794, from all the correspondence and treaties, which had been formed or proposed to be formed by the Commissioners of the two governments the right of the United States had not been considered any way doubtful, and the whole object of the arrangements thus attempted to be made had been limited to surveying and marking the line.

With a recurrence to these facts and circumstances, a more particular attention to the correspondence which preceded the treaty of Ghent, which is herein before quoted, to the end that the true intent and meaning of the contracting parties in the fifth article of that treaty may be more clearly ascertained and better understood, is not deemed unimportant.

The British Commissioners ask a revision of the Boundary line between the United States and the adjacent British Colonies, disclaiming expressly at the same time, any disposition to acquire an increase of territory, and limiting their proposition to the simple fact, of so ascertaining the line as to prevent uncertainty and dispute. Such was their first proposition; but as the conferences progressed, they in some measure varied their proposition, and instead of asking simply a revision of the line, to prevent uncertainty and dispute, they ask a direct communication from Halifax and the province of New-Brunswick to Quebec; and when they are requested to explain, explicitly declare that it must be done by a *cession of that portion of the District of Maine which intervenes between New-Brunswick and Quebec and prevents a direct communication.*

Here they clearly and distinctly ask the territory as a cession, thereby conceding the title is not in them, which the subordinate agents since appointed, have had the ingenuity to claim as a right. The American Commissioners most clearly and explicitly deny any authority on their part, to cede any portion of the territory asked of them, whether to secure the right of passage between their different provinces or otherwise, and the denial is repeated as often as the subject recurs in the conferences or correspondence.

The British Commissioners, in giving a construction to their own proposition for securing a direct communication between New-Brunswick and Quebec, say "their proposal left it open to the American Commissioners, to demand an equivalent for such cession in territory or otherwise." Here our right is again con-

* Appendix II.

ceded, in language which admits no doubt, for the supposition that the British would consent to purchase of us that territory to which they had title, is absurd and preposterous. The British are too vigilant in their negotiations, to overlook their own claims, whether well or ill founded. They are not generous beyond what their interest dictates, nor are they liable to the imputation of undue or disinterested generosity in their negotiations.

The American Ministers most explicitly stated, that they were not instructed to agree to any revision of the line where no uncertainty or dispute existed, and that they could perceive no uncertainty or matter of doubt in the treaty of 1783, with regard to that part of the boundary of the District of Maine, which would be affected by the proposal of Great Britain on the subject—That they never understood that the British plenipotentiaries who signed that treaty, had contemplated a boundary different from that fixed by the treaty, *and which requires nothing more, in order to be definitively ascertained than to be surveyed in conformity with its provisions.*” The subject not having been a matter of uncertainty or dispute they were not instructed upon it, and had no authority to cede any part of the State of Massachusetts, even for what the British might consider a fair equivalent.

To which the British Ministers replied, that although the American Commissioners acknowledged themselves to be instructed to discuss the revision of the boundary line, yet by assuming to decide for themselves what was or what was not a subject of uncertainty or dispute, they had rendered their powers nugatory or inadmissibly partial.

The American Commissioners having stated their construction of the treaty of 1783, as it applied to the line between Maine, and the Provinces of Nova Scotia and Canada, say that they have not pretended to assume any thing, but shall persevere in their opinions until the British Commissioners should point out, in what respect the part of the boundary, which would be affected by their proposal, is such a subject of uncertainty or dispute. That all the doubts which could have ever existed in relation to the line, were settled under the treaty of 1794, and were prepared to propose the appointment of commissioners to extend the lines to the highlands in conformity to the treaty of 1783. That the proposition of the British was to vary those lines by obtaining a cession of the territory between New-Brunswick and Quebec, although that territory was unquestionably included within the boundary lines fixed by the treaty.

Although the subject is again thus clearly pressed upon the consideration of the British Commissioners, and they are call-

ed upon to point out any uncertainty or dispute, or cause of uncertainty or dispute, in relation to the boundary, with a perfect understanding, that their acquiescence would be taken as the admission of the fact, to wit, that there was no uncertainty or dispute as to the boundary line ; they pointed out no uncertainty, but contented themselves by saying the "British Government never required that all that portion of Massachusetts which intervenes between the province of New-Brunswick and Quebec should be ceded to Great Britain, but only that small portion of territory which interrupts the communication between Halifax and Quebec (there being much doubt whether it does not already belong to Great Britain.)" Here no uncertainty or dispute is pointed out, they do not once say the line stops at Mars hill, or any other point, but admit that it does not, by invariably asking the territory, or a communication between New Brunswick and Quebec or Halifax and Quebec as a cession. Instead of meeting the proposition of the American Commissioners, in the frankness and candor with which it was made, they do no more than superadd a doubt, which the whole correspondence shews they did not believe, perhaps with a glimmering hope that the British Government, might find some daring Agent who would have the hardihood to claim, and by ingenious sophistry endeavor to maintain, as a right, that which from their convictions of right and justice, they requested only as a cession ; some one who would not be restrained, by that high minded and honorable course, which ought ever to be preserved, to maintain the relations of peace and harmony between nations ; but would sacrifice every consideration of that kind to acquire a temporary advantage regardless of its future results.

After the British had taken military possession of Castine, and claimed, from that circumstance, the military possession of the territory of the State of Maine, east of Penobscot river, and having altogether failed, even in the prospect of obtaining any part of the State of Maine by cession, they change their proposition, and, to effect the same object, propose the principle of *uti possidetis*, as the basis, subject to such modifications as mutual convenience may be found to require. To this proposition, the American commissioners promptly and unequivocally, as they had done on all other occasions, refused treating "on the principle of *uti possidetis*, or upon any other principle involving a cession of any part of the territory of the United States."

Can it for a moment be supposed, that when the British commissioners so often requested the territory, as a cession, and expressed a disposition to give an equivalent, if it would be received, and when they were so often and peremptorily

denied, on the ground of total want of authority to cede, that it was the intention of the commissioners to do any thing more, than to provide for the survey and marking of the lines, and to guard against any possible difficulties of minor character, such as the variation of the needle, or the precise spot, where the corner, to wit, the north west angle of Nova Scotia, should be fixed, on the range of highlands, limiting the sources of those rivers which empty themselves into the river St. Lawrence, or some other possible difficulties of a similar character, none of which would vary the lines materially, or in any important degree, to either government? When the whole is fairly and candidly examined, such must be the conclusion. No other conclusion can be made, unless it be on the ground that the American commissioners undertook to exercise a power, which they so often and explicitly declared to the British, they did not possess, and if they did exercise a power which they did not possess, their acts were not obligatory upon the government.

A careful examination of the fifth article of the treaty of Ghent, does not involve a conclusion, that the commissioners departed from the powers given them, and their repeated and reiterated declarations. The part of the article relating to the point under discussion, is as follows: "Whereas neither that point of the highlands, lying due north from the source of the river St. Croix, and designated in a former treaty of peace between the two powers, as the northwest angle of Nova Scotia, nor the northwesternmost head of Connecticut river, has yet been ascertained, and whereas that boundary line between the dominions of the two powers, which extends from the source of the river St. Croix, directly north, to the above-mentioned angle of Nova Scotia, thence along the said highlands which divide those rivers that empty themselves into the river St. Lawrence, from those which fall into the Atlantic Ocean, to the northwesternmost head of Connecticut river, thence down along that river to the forty-fifth degree of north latitude, thence by a line due west on said latitude until it strikes the river Iroquois or Cataraguy, has not yet been surveyed; it is agreed for these several purposes, two Commissioners shall be appointed, sworn and authorized to act exactly in the manner directed with respect to those mentioned in the next preceding article, unless otherwise specified in the present article. The said Commissioners shall have power to ascertain the points abovementioned, in conformity with the provisions of the said treaty of peace of one thousand seven hundred and eighty three, and shall cause the boundary aforesaid to be surveyed and marked according to the said provisions. The said Commissioners shall make a

map of said boundary, and annex it to a declaration under their hands and seals, certifying it to be a true map of said boundary, and particularizing the latitude of the northwest angle of Nova Scotia, and of the northwesternmost head of Connecticut river, and of such other points of said boundary as they may deem proper."

Here the question may be repeated, has Nova Scotia two northwest angles ? or an ideal one, placed where the "*cupidity*" or the interested views of either party may dictate ? or is the northwest angle of Nova Scotia, the northwest angle of Nova Scotia as established by the Crown and Government of Great Britain, adopted by the treaty of 1783, and recognized in the discussions by the Agents under the fifth article of the treaty of 1794, and also recognized by all subsequent discussions between the United States and Great Britain ? It cannot be reasonably supposed, that the Commissioners had any other angle in view, especially as the article seems to recognize and place the location of the angle on the construction of the treaty of 1783, explained as it was by the treaty of 1794, and the discussions under that treaty. It cannot be supposed that the British Commissioners expected to gain, that which they had requested as a cession, or the American Commissioners expected to lose any thing which they had denied, from the language used and references made in the article above quoted ; but it is to be supposed, that both parties, in agreeing to the article, limited to the description in the treaty of 1783, as the same had been defined and the rights of the parties under it had been explained by direct and implied acknowledgements of its true construction, from the time of its adoption, intended simply to provide for the survey and marking of the line. No other conclusion can follow, unless it be supposed, that the high minded and honorable men, who negotiated the treaty, did on the one part resort to the most despicable chicanery, and the other to a gross and palpable violation of the power and authority to them delegated ; neither of which can be true. It follows then, that to fulfil this article, nothing more was required, than to survey and mark the lines, and that the difficulties which could arise, if any, were of minor consequence, not involving in any event, but a trifling extent of territory, and of little importance to either government, and by no means involving the title to the intervening territory between New Brunswick and Quebec, which had often been sought as a cession, to secure a direct communication, and as often denied.

If the Agents and Commissioners of the two governments have departed from this plain and natural interpretation of the treaty, they must have erred from causes which are cre-

ditable to neither. If a line were to be established, contrary to this obvious construction, it is to be foreseen, that the party thus deprived of its rights, would imbibe a spirit not to be subdued, and which would seek its redress whenever it could, at any sacrifice. If the British colonists were to be governed by their true interests, they would not endeavor to acquire any thing by construction, against the true and common sense interpretation of all the treaties, because in that they would discover the germs of eternal hostility.

If, in the prosecution of the duties under this article, the Agent of the United States has misconstrued and extended its application beyond its plain and obvious construction, or had not a clear and distinct view of the meaning of the terms "*highlands, which divide the waters,*" in the treaty of 1783, or was bewildered by mountains, or mountain ranges, when even mole hills answer the description precisely, if they do "divide the waters which flow into the river St. Lawrence, from those which fall into the Atlantic," and if the British Agent, in the prosecution of his duties, under the same article, has pretended that the northwest angle of Nova Scotia is at Mars hill, and that the line of the United States runs southwestwardly from that point, when the territory extending north northwest, west and southwestwardly, is claimed as a part of the ancient province of Nova Scotia, thereby destroying the northwest angle of Nova Scotia, which had been established by a series of acts of the British government, and acknowledged by them to this time, and substituting therefor, a southwest angle, and, if from the course so absurd and preposterous in itself, ingenuity should obtain a temporary triumph over right, a question will arise, growing out of the nature of, and the organization of the State and National governments; has the United States any constitutional authority to cede any part of an independent sovereignty composing one of its members?

The Commissioners of the United States who negotiated the treaty of Ghent, uniformly denied the right of cession, but whether they founded their denial on the want of authority in the instructions given them, or upon the Constitution of the United States, is not perfectly clear; if upon the first, they adopted a right course; if upon the last, their course was also right, and there must be perfect harmony of opinion, because either principle preserves the rights of the individual States. On this subject it may be important to consider the object and nature of the association of the States, which led to the adoption of the Constitution.

The general government, which had originated in the oppression of Great Britain and been sustained by the pressure of an external enemy, and had carried the country through

the Revolution, when peace was restored, was found to be too feeble for any valuable purpose to the States. Its inherent defects had, by a few years experience, been shewn, and the States for want of general union were in danger of degenerating and falling into anarchy, and of becoming a prey to each other, or any foreign nation. The independent sovereignties saw the necessity of associating anew, which they did, and in that association mutually delegated limited parts of their sovereign power for the greater security of those retained.

As in the first confederation mutual defence and protection was a primary object, so it was, in the last confederation; a mutual protection, not limited to the personal rights of individuals, but extended to the full and free exercise of the whole sovereign power, not delegated, to the extent of the territorial jurisdiction of the State. With this view of the object of the confederation, composed as it was of independent sovereignties, it cannot be supposed that they ever intended to give to the general government any power by which they might be destroyed and consolidated, or by which even their rights of sovereignty and jurisdiction might be abridged. It has never been pretended that Congress has the power of taking from one State and giving to another, or to incorporate new States within the limits of old ones; nor has it ever claimed to exercise such a power. The most it has ever done, or has a constitutional right to do, has been, to give its consent to the compact made between the parties immediately interested, and to admit the new State into the Union.

If Congress do possess the power of ceding any portion of an independent State, they possess a power to break down the State sovereignties by which they were created, and at their pleasure to produce a consolidation of those sovereignties; a power which was never delegated or intended. If, therefore, the Congress of the United States attempt to exercise such a power, the State thus deprived of, or limited in its rights of sovereignty, must submit, or enforce its rights.

The rights of protection in the exercise of the sovereign power of the State are equal, whether it is an exterior or interior State, and Congress can have no more constitutional right to take from Maine and cede to New Brunswick, than they have to take from Virginia a part of her territory and cede it to North Carolina. Congress has not claimed to exercise such a power, for the construction of the treaty of Ghent, herein before given does not involve such a power, unless from a misconstruction of its provisions, limiting as it does, the whole power of the commission to the surveying and marking of the lines, and erecting its monuments, according to the treaty of 1783.

But it will at once be seen, if the government of the United States yield to the misconstructions of the agents, so far as to be endangered by the result, that by the misconstructions of the one and the ingenuity of the other, arising from a strong desire to acquire for his country the territory which had been so often but unsuccessfully sought as a cession, and by its final result the lines of the State of Maine are materially changed, she will be as much dispossessed of her territory and sovereignty, as she would have been by a direct exercise of the power of cession. The one mode, equally with the other, involves an assumption of power which was never delegated. If such an unfortunate occurrence ever arises, from any cause, the duty which the State owes herself and her sister republics is plain.

While it is the duty, as well as the interest, of individuals, as well as States, to yield a peaceable and quiet obedience to every exercise of constitutional power on the part of the government of the United States, it is equally their duty and their interest to resist all encroachments on the rights which they have reserved. If a part of the State of Maine should be surrendered by the government of the United States, either by a direct or indirect exercise of the power of cession, it will then be a duty which she owes to herself, to consider, whether she has, by such an invasion of her rights, lost her right of sovereignty and jurisdiction. Such an exercise of power can have no obligatory force, and unless Maine quietly and peaceably submits, it will be the duty of the States, a duty imposed by the Federal Government, to afford her aid and protection and to aid her in regaining her rights.

From the provisional treaty of peace in 1782, to the treaty of Ghent, for a period of more than thirty two years, the British always conceded our title and our rights, whenever the subject was presented in the discussions between them and the United States. Even in the argument of the British Agent under the fourth article of the treaty of Ghent, delivered before the Commissioners in September, 1817, after the Board under the fifth article of the same treaty, and the agents had made their agreements for a survey, he unequivocally admits and shows our title. He says, "That the northwest angle of Nova Scotia mentioned in the treaty as the commencing point in the boundary of the United States is the northwest angle of the said Province of Nova Scotia, designated in the grant to Sir William Alexander in 1621, subject only to such alteration as was occasioned by the erection of the Province of Quebec, 1763."

Since the treaty of Ghent and the entire failure on the part of the British to obtain the territory by cession or purchase,

and since September 1817, they have pretended to claim it as a right, and do, in fact pretend to claim a much greater extent than they had ever sought by way of cession, by extending the claim much further, south and west, than is necessary to secure a communication between Halifax and Quebec.

The idea of claim, as they at present make it, probably originated with some of their subjects in the provinces, who, having a great desire to hold the country, endeavored to stimulate the government of Great Britain, that she might, by some means, be induced to obtain it. In order to show the origin as well as the substance of their claim, as they now make it, the following extract is made from a work published a little before the organization of the commission under the fifth article of the treaty of Ghent, entitled "A topographical description of the province of Lower Canada, with remarks upon Upper Canada, and on the relative connexion of both Provinces with the United States of America, by Joseph Bouchette, Surveyor General of Lower Canada, Col. C. M." This work was dedicated to the present King, George IV, then Prince Regent, and was accompanied with splendid maps.—Col. Bouchette was attached to the commission under the fifth article of the treaty of Ghent, at the commencement, as principal surveyor on the part of the British.

He says, "the height of land on which the boundary is supposed to pass, runs to the northeast and divides the waters that fall into the St. Lawrence from those flowing into the Atlantic, and which height after running some distance upon that course sends off a branch to the eastward, that separates the head of the Thames falling into Lake Temiscouata and river St. John, and by that channel into the bay of Fundy from those that descend in a more direct course to the Atlantic.

"The main ridge continuing its northeasterly direction is intersected by an imaginary line, prolonged in a course astronomically due north from the head of the river St. Croix, and which ridge is supposed to be the boundary between Lower Canada and the United States; at least such appears to be the way in which the treaty of 1783 is construed by the American Government, but which ought to be more fairly understood as follows to wit: That the astronomical line running north from the St. Croix should extend only to the first easterly ridge, and thence run westerly along the crest of the said ridge to the Connecticut, thereby equitably dividing the waters flowing into the St. Lawrence from those that empty into the Atlantic, within the limits of the United States, and those that have their streams within the British province of New Brunswick.

It is important and must always have been in contemplation, that an uninterrupted communication and connexion should exist between all his Majesty's North American possessions ; but by the manner in which the treaty is insisted upon by the opposite party, a space of more than eighty-five miles would be placed within the American limits, by which the British provinces would be completely secured ; it would also prove the inconvenience of having the mail, from England to Quebec, carried over that distance of American territory, and which may be deemed either a matter of indulgence or complained of as an encroachment, according to the transfer of the times. Within this tract is also the Madawaska settlement, consisting of nearly two hundred families all holding their grants from the British Government. England at all times high minded and generous never shrinks from the fulfilment of her engagements even though from the want of political acuteness in the persons employed, they may have been formed in a manner prejudicial to her interests. But at the same time she has a right to require that the interpretation of them should not be overstrained or twisted from the obvious meaning and intent, by a grasping *cupidity* after a few miles of country which could be of little advantage to the opposite party."

The above extract has been made, because it shews the whole of the British claim as they have since made it, as well as the substance of all the arguments they have urged in its support ; all which has since been done by them, whether in making surveys, collecting documents, or making arguments, for a period of more than five years, has not placed their pretensions in a stronger light. If subsequent occurrences have given their claim any additional plausibility, it can only be attributed to the Agents having transgressed the authority given them by the treaty, and discussed a claim which was not submitted. Here it is wholly unnecessary to repeat the facts and documents herein before quoted or referred to—a mere recurrence to them and placing them in opposition to the British argument, shows, to use no harsher term, its total absurdity.

The argument seems to be addressed to the pride of the British, and vanity of the Americans—As it relates to the British, the argument has had its effect, but as it relates to the Americans, it has been a little too gross to deceive. If the discovery had been made more seasonably, it might have acquired a temporary appearance of plausibility, but when the subject had come before Parliament and had also been under discussion by the Commissioners and Agents of the two govern-

ments, and last of all, when the British Commissioners had perseveringly sought the territory, in every form as a cession, from seventeen hundred and eighty-two to eighteen hundred and fourteen, a period of thirty two years, the argument is not calculated to deceive, and ill accords with a character always "*high-minded and generous, and which never shrinks from the fulfilment of its engagements.*"

The territory, from all our researches never has been claimed as a right by the British government or any of its Commissioners or Agents, until 1817, after the Commission under the fifth article of the treaty of Ghent was organized; but on the contrary, as has been before shewn, the right has always been conceded to be in the United States. Now their claim, stripped of its verbiage, and translated into plain language, rests on this plain and simple proposition—the country lies between two of our provinces, it will be useful to us, not only by facilitating communication, but is important also in a military point of view—we could not obtain it by cession, though we were willing to give an equivalent, but we want it, and we will have it.

The State of Massachusetts considering her right of sovereignty and jurisdiction co-extensive with her title, did not anticipate any disturbance or intrusion, and did not consider herself under any necessity of cultivating her whole territory, or of keeping up a military force for its protection, relying upon the good faith which had appeared to manifest itself on the part of the British in the negotiations and discussions between them and the United States, and presuming also that the British, whenever they were found to have crossed her lines, would disavow the act and restore the country—she had from time to time made grants of her unappropriated lands, as the same were sought for public and private purposes. She early granted Mars hill to some of the soldiers of the revolution.—In Sept. 1806, Massachusetts conveyed two half townships, one to Deerfield and the other to Westfield Academies, lying west of the township of Mars hill, pursuant to a survey and plan made in conformity with the provisions of a resolve which had passed some time before. In Dec. 1807, she conveyed one township lying on both sides of the Aroostook and near the meridian line, from the source of the St. Croix, according to a selection, survey and plan, made under a resolve passed in March, 1806. In January, 1808, she conveyed ten thousand acres lying west of the aforesaid township, and on both sides of the Aroostook, pursuant to a survey and plan made under a resolve of March, 1806. Had the residue of territory been applied for, she would have continued granting it, in large

or small tracts, until she had granted the whole, provided the object of the grants had met her approbation. Hence she not only exercised sovereign power co-extensive with her title, but also individual acts of sovereignty, and to what extent she pleased.

The restrictive system adopted by the government of the United States, commencing about this period, checked the general business of the country, and at the same time allayed the spirit of improvement and settlement, and entirely put a stop to speculations in wild lands, and there being no more applications for grants of wild lands, she had no occasion to make them. The war succeeded, which still further checked the progress of improvement and settlement, and several years were required to recover from the diversions occasioned by it; hence from a coincidence of circumstances no grants were made.

Entertaining no suspicion that any claim would be made by the British, or discussed by the agents, inconsistent with every thing which had transpired, and especially in all the correspondence which had preceded, and in the treaty of Ghent itself, she could have had no reason to presume that claims would be made and urged, which could infringe her rights of sovereignty and jurisdiction. Hence she reposed in perfect confidence, that the lines would be run and marked, and monuments erected according to her title, as it had always been understood by her, and conceded by the British, and therefore made no inquiries to ascertain the claims urged, or the progress of the Commission. In 1819 she passed the act of separation between her and the district of Maine, which was approved by Congress the next session, and Maine was admitted into the Union as an Independent State—By the act of separation Massachusetts retained the fee simple of a moiety of the wild lands, but the residue, and the entire sovereignty and jurisdiction was vested in Maine. Maine having thus become an Independent State, and more than three years having elapsed after the organization of the commission under the fifth article of the treaty of Ghent, a time more than sufficient, to have performed all which was submitted and there being reports that the British agent was vigilant, and the American remiss, and that surveys, were going on in quarters wholly unanticipated, she of course became anxious, and had reason to fear the subject was taking a direction never in the contemplation of the commissioners who negotiated, or involved in the treaty itself. The Governor of the State noticed the subject, in the first message which was delivered June 2d, 1820, to both branches of the Legislature. He says, "What progress has been made under the

fifth article of the British treaty in settling the eastern boundary of the State against the province of New-Brunswick, and the northern boundary against that of lower Canada, I am unable to inform you. As this State and Massachusetts have so deep an interest in the settlement of these boundaries, there would seem to have been a propriety in the agent appointed on the part of the United States, being taken from one of these two States. But under existing circumstances you will consider whether the interest of the State does not require from you the adoption of such arrangements as are best calculated to afford the present agent such information in relation to this important subject as the people in this State have it in their power to give."

The Message was answered on the 12th June, 1820, wherein it was among other things, resolved "That the Governor of this State be requested to transmit to the President of the United States, a copy of the Resolve, accompanied with such representations in relation to this subject, as he shall think proper and best calculated to effect the object." The request was complied with by the Governor, who in July, 1820, transmitted a copy of the resolve to the President, and among other things observed to him "When it is considered that Massachusetts and Maine have the right of soil, that Maine has also a State jurisdiction, that the people here have not the honor of an acquaintance either with the Commissioner or Agent, and have not been advised of any reason for the delay to the present time, it will not be considered a matter of surprise that their extreme solicitude should be such as to render desirable, information on a subject so generally interesting."

"It is not unknown to the people of this state that the British agent has been very attentive to the business in which he has been engaged, and that he has caused the country near the lines to be examined and explored in the most particular manner; while it is not understood that comparatively any thing has been done on the part of the American Agent. With impressions such as these, the boundary being an extensive one it would be highly satisfactory to the people of this State should it comport with the views of the executive of the United States, to designate a person to assist the present agent in his important duties, that the boundary may not only be more expeditiously, but more satisfactorily adjusted."

The substance of the reply which was made appeared in the next message of the Governor.

This year, in the exercise of their general powers of sovereignty and jurisdiction, the Marshal of Maine, under a law of the United States, took the census of the inhabitants settled

on the St. John river and its tributary streams west of the Meridian line from the monument at the source of the Saint Croix, and the south line of the province of Quebec, or Lower Canada.

In the autumn of the year 1820, an agent was sent by the Governor and Council to explore the public lands upon the St. John and its branches west of the meridian line from the monument, which service he performed.

The Governor again in his message, which was delivered January 11, 1821, to both branches of the Legislature, called their attention to the subject of the preservation of the timber on the public lands, and after enumerating several places as the scenes of depredations, says, "it appears that trespasses within our acknowledged territory, particularly on the rivers Aroostook, De Chute, Presquille and Meduxnekeag, committed by persons residing in the British provinces are very great, accordingly arrangements have lately been adopted with a view to prevent such predatory incursions in future."

He also states that he forwarded the Resolve of the prior session of the Legislature to the President, and the Secretary transmitted a copy of the same to the American Commissioners, who in reply "gave a reasonable ground of expectation that the final decision of the points in controversy respecting those lines would have been made in October last."—And from information obtained from other sources, adds—"All reasonable hope of a speedy adjustment seems therefore to have vanished."

The Governor after having received information that British subjects were trespassing on the timber lands of Maine and Massachusetts on the Aroostook, appointed Benjamin J. Porter, Esquire, with the advice of council, to proceed immediately to that place, and to notify the persons whom he should find trespassing on the timber lands aforesaid west of the line which had been run by order of the Commissioners appointed by the United States and Great Britain from the monument at the source of the St. Croix to the line of the province of Lower Canada, that if they would pay a proper consideration for the timber they had cut, and desist from any further depredation on that part of our territory, he was authorized to settle with them on those principles—but if they declined, he was directed to proceed to Houlton Plantation and adopt the necessary measures, and obtain such assistance as in his judgment would be required, to take the trespassers and their teams, and bring them to Houlton Plantation, and there keep them until the Executive could be advised of the measures adopted.

The Agent thus appointed and instructed proceeded to the Aroostook, and found British subjects trespassing there, with

whom he settled, and received also the assurances required, that they would not return, and would desist from cutting the timber.

The efforts thus far made, not having produced the intended results, the Legislature, January 16, 1822, passed a Resolve requesting the Senators and Representatives of this State in the Congress of the United States, to collect information touching the causes of the differences between the American and British Commissioners under the treaty of Ghent respecting the boundary line, between this State and the British provinces of Lower Canada and Nova Scotia, and the extent and nature of the claims set up by the said British Commissioners. The Resolve was duly communicated. No progress was however made, and the object of the Resolve was not answered. In February, 1822, an Agent was appointed with full power to prevent trespassing upon the timber on the public lands, on the Aroostook, Meduxnekeag and Presquille rivers and their branches west of the meridian line from the monument, and he entered immediately upon the duties of his agency and visited the places required, and accomplished the objects of his appointment. The subject is again recurred to Jan. 10, 1824, by the Governor in his message, which led to no specific act on the part of the Legislature.—Jan. 7, 1825, the Governor again calls the attention of the Legislature to the subject of the northeastern boundary, stating also that he had understood from respectable sources, that depredations had been committed on our timber lands, on the Aroostook and Madawaska and other streams emptying into the St. John; and that unless energetic measures are speedily adopted on the part of the State, our valuable timber in that region will be soon destroyed; and that from the representations, the depredations were committed by British subjects.

This led to an investigation as far as the limited means possessed by the Government of this State permitted, and a Resolve passed Jan. 24, 1825, among other things requesting the Governor of this State to correspond with the Governor of the province of New-Brunswick relative to the depredations which had been committed by British subjects upon the timber on the public lands of this State, west of the boundary line between this State and the province of New-Brunswick, as heretofore recognized; and to ascertain whether that government had authorized any persons to cut timber upon those lands or to settle thereon.

The land agent of Maine was instructed in conjunction with such person as should be designated by Massachusetts, or if none should be appointed, without that agent, forthwith to take effectual measures to ascertain the extent of the depreda-

tions on the lands belonging to this State and Massachusetts, or on lands belonging to this State ; by whom the same have been committed, and under what authority, if any, such depredations were committed.

The Governor was also requested to forward each of the Senators and Representatives in Congress from this State a copy of the report of the Committee on the part of the Governor's Message relative to depredations on the public lands, and of the Resolves, and also to request them to take the necessary measures to obtain an early adjustment of the Northeastern boundary of this State.

The Governor enclosed and forwarded the same on the 25th of January 1825. During the same session of the Legislature, February 22d, 1825, they passed a Resolve respecting the settlers on the St. John and Madawaska rivers. "Whereas there are a number of settlers on the undivided public lands on the St. John and Madawaska Rivers, many of whom have resided thereon for more than thirty years : Therefore Resolved, That the land agent of this State, in conjunction with such agent as may be appointed for that purpose, on the part of Massachusetts, be, and he is hereby authorized and directed to make and execute good and sufficient deeds, conveying to such settlers in actual possession, as aforesaid, their heirs and assigns, one hundred acres each, of land, by them possessed, to include the improvements on their respective lots, they paying the said agent for the use of the State, five dollars each, and the expense of surveying the same."

The Commonwealth of Massachusetts, June 11, 1825, did provide by Resolve among other things—"Whereas there are a number of settlers on the St. John and Madawaska rivers, many of whom have resided there more than thirty years: Therefore Resolved, That the land agent of this Commonwealth in conjunction with such agent has been or may be appointed for that purpose on the part of the State of Maine, be, and the same is hereby authorized and directed to make good and sufficient deeds, conveying to such settlers in actual possession as aforesaid, their heirs and assigns, one hundred acres each of land by them possessed to include their improvements on their respective lots, they paying to the said agent, for the use of this Commonwealth five dollars each, and the expense of surveying the same."

The agents thus authorized did in the autumn of that year proceed up the St. John to the Madawaska settlement, and thence to the mouth of the Maryumpticook, and surveyed, and conveyed, two lots of land, on the 3d of October, to John Baker and James Bacon, citizens of this State. They had settled above the French neutrals on the St. John and its waters ;

and at the time when the settlements on the lots were commenced, there was no settlement within several miles of them. They also posted up notices, stating their authority, and proposing to give deeds, according to the Resolves under which they acted.

This year Maine and Massachusetts, in continuing their surveys of the undivided lands, surveyed all which had not been previously done, and conveyed of two ranges of townships, on the meridian line running north from the Monument at the source of the St. Croix, and above Mars Hill, to a place within a few miles of the river St. John. The two grants of Massachusetts made in December, 1807, to the town of Plymouth, and in January, 1808, to William Eaton, on the river Aroostook, according to surveys made in 1807, compose a part of the ranges.

In a letter bearing date May 23, 1825, from the British minister at Washington, to the Secretary of State of the United States, in answer to his of the 27th March preceding, complaining of the encroachments of the inhabitants of New Brunswick, committed upon lands of Maine and Massachusetts, in cutting and carrying away timber within the boundaries of those States—and the places where the trespasses were committed were also described in the accompanying papers, to be on the Aroostook and Madawaska rivers.

The British minister in reply, states, that he had made inquiries of Sir Howard Douglas, the Governor of New Brunswick, and had been assured by him, that the charge, as far as the Government of the provinces was concerned, was unfounded, and that he should use his best endeavors to put a stop to practices in themselves so disgraceful. It was further stated by Sir Howard, "that in assuming the Government of New Brunswick, he found that licenses to cut timber, and other acts of sovereignty, had long been exercised on the part of Great Britain over certain tracts of land in which the Bistook" (Aroostook) "and Madawaska were included, heretofore well understood to belong to New Brunswick, *but subsequently claimed by the Commissioners of the United States appointed to negotiate with the British Commissioners for adjusting the boundary line of the respective provinces: to these claims no disposition was ever shewn, on the part of Great Britain to accede.*"

It is not supposed that Sir Howard intended to misrepresent facts, because it would be entirely inconsistent with the honorable character which he is supposed to sustain; but acquitted of that charge, his representations must be attributed to ignorance of the subject, or want of research into the premises. Compare the history of the negotiation of the provisional treaty of peace, in 1782, the doings of the Commissioners un-

der the fifth article of the treaty of 1794—more especially the argument of the British agent, and all the correspondence which preceded the treaty of Ghent, wherein the British Commissioners so often and so repeatedly ask the country in which the Madawaska settlement is included, as a cession, and are so often denied by the American Commissioners, on the ground that they possess no authority to make a cession, and no further comment is necessary to shew the falsity of his representations.

It is further said by Sir Howard, "In fact by a reference to documents in the possession of the British colonial department it appears that the settlement at Madawaska in the province of New Brunswick was made under a grant from the crown, upwards of thirty years ago. So late as the year 1810, no claim had been advanced by the United States, although the settlement had been established at the time for upwards of twenty years, under a grant from the government of New Brunswick, and had been constantly designated the Madawaska settlement."

Admitting the fact, as to the antiquity of the settlement to be as stated, giving the utmost extent to both modes of expression, it commenced under grants about the year 1790, long after the treaty of 1763. Unless the grants were within the province of Nova Scotia, they were intrusions; that they were not within that province abundantly appears from all the documents before quoted in relation to the boundaries. No valid claim of national sovereignty can be based on such acts in the forum of honor, conscience, or law. And no jurisdiction can, with any semblance of propriety, be claimed beyond the actual possession; it cannot, without violating the acknowledged principles in such cases, be extended by construction. If such were the facts and the settlements had been made as early as 1790—if the British considered that they had any claim to the territory on that account, it is extraordinary, that it should have been entirely overlooked by the government, its ministers and commissioners, and never have been discovered until 1817, or since that time; more especially, when the treaty of 1794, and the discussions under the fifth article of it, wherein it was conceded that the line due north from the source of the St. Croix, wherever it should be established, crossed the St. John, to the line of the government of Quebec, and by a reference to the map it will at once be seen that had the most westerly point been adopted which the British agent contended for, that the Madawaska settlement is west of the meridian, and at all events within the United States. When also, the subject of surveying the boundaries had been discussed on several occasions between that time and the treaty of Ghent,

and when also, during the whole discussion which led to that treaty of Ghent, the territory is sought as a cession and with great perseverance, by a resort to every mode which circumstances or their own ingenuity suggested.

But the facts as stated are not admitted. The settlement at Madawaska did not succeed, but had preceded, many years, the grants which Sir Howard states, and therefore cannot be said to be made under the grants. The settlement was made principally by French neutrals, whose ancestors had lived near the bay of Fundy previous to the American revolution. They, to avoid the British laws moved up the river St. John, to a place called St. Anns, now Frederickton. After the close of the war, when the British established a town and military post at that place, and circumscribed them in their quarters, stimulated by their repugnance to the British, and desirous of living under their own regulations, they pursued their course up the river, and established themselves at Madawaska, where they lived many years, probably entirely unknown to the world. Some of their countrymen joined them from Canada. If the settlers, or some of them, now have grants from the Province of New Brunswick, the reason for making such grants does not now appear. The intention of the Government can be inferred only from the facts disclosed, from which it most clearly follows, that they did not, by the intrusion, consider themselves as extending their rights of property or jurisdiction, not having stated the fact, for that purpose, until long since the treaty of Ghent. If the fact had been relied on by them as giving any claim, the ministers who negotiated the treaty of Ghent, while they were endeavoring by every means in their power to obtain the territory in which the Madawaska settlement is situated, by cession, would not have been guilty of the omission.

Sir Howard still further says, "with regard to the timber cut by British subjects on the river Bistook (Aroostook) the very circumstance of its having been seized by Mr. Porter of the State of Maine, proves that the inhabitants of that State consider themselves as at full liberty, to appropriate all the timber in that district, to their own use. In truth, that territory is especially represented by the Senate of Maine as lying within the acknowledged boundaries of that State. Now, this is notoriously not the fact. The British Government contend that the northern boundary line of the United States, running from the source of the river St. Croix to the highlands, is terminated at Mars hill which lies at the southwest of the Bistook, (Aroostook) at least therefore the British territory declared to be the undoubted property of the State of Maine, is but a point in abeyance. Both parties claim, and, it appears, have exercised an equal right over it."

That the British pretended any claim to the territory to the westward of the meridian line from the source of the St. Croix and southerly of the line of the Province of Quebec or Lower Canada was totally unknown to the United States until long after the treaty of Ghent and it seems to have been equally unknown to the British. The observation "This was notoriously not the fact," can only apply to a period subsequent to the treaty, when it had been deemed proper by individuals and the subordinate agents of the British Government to acquire by some means the territory which they could not demand as a right—The above observation does not appear to be true, from any thing, which had transpired of a public character, between the American and British Governments. Such pretended and unfounded claims could not have been, and were not anticipated. But after all the pretensions, the claim and exercise of right, he admits to be equal, which is extraordinary, when the whole is taken into consideration and contrasted with the recent origin of and bold assumptions on which they are founded.

It has already been shewn, that Massachusetts has made several grants before 1808, some of which were on the Aroostook near the meridian line, from the monument at the source of the river St. Croix, and that she and Maine, had in addition to their general jurisdiction, exercised all necessary acts of particular jurisdiction. And the British subjects found there, committing depredations on the timber, by Mr. Porter, were there as mere trespassers not claiming any right or authority from any source. It was not until long after this period, that any persons were there under licenses from the province of New-Brunswick, which caused the mention of it in the Governor's message in Jan. 1825. The British claim, as they make it, is even void of plausibility, they ought not to have claimed the territory upon the Bistook, (Aroostook) and upper part of the St. John and its tributary streams, as a part of the ancient province of Nova Scotia, but they ought to have continued the line from Mars hill, eastward to the Bay of Chaleurs, and have insisted that that was the northern line, thereby yielding a part of Nova Scotia, and have left the upper part of the St. John and its tributaries, and the Restigouche river, in the province of Quebec or Lower Canada, and if by that means, they had violated one of their favorite principles of exposition, to wit, that the province which has the mouth, ought also to have the sources of the river, still the whole would have been within the general sovereignty of Great Britain, one province only gaining more than the other lost; yet such a claim, though more plausible, by relieving them from the solecism of destroying the northwest angle, or rather converting the northwest angle of Nova Scotia into a southwest angle, which can only

be arrived at, by running first north for more than forty miles from the monument, at the source of the river St. Croix, and then southwesterly for more than one hundred miles, would have been no better, nor would it be based on a more solid or substantial authority.

The British Minister then observes, "the Governor of New-Brunswick informs me, he does not consider himself at liberty to alter in any way, the existing state of things as far as regards the district above-mentioned, but he assures me that he will take especial care to keep well within the limits of the line of duty marked out for him, and considering the shape which this question is now assuming he will feel it imperative on him to apply immediately for still more precise instructions for guidance of his conduct in a matter of so much delicacy."

More notice has been taken of the foregoing letter than its importance otherwise demanded, on account of its being the first document of an official character in the archives of this State, which goes to show the British claim as it had been made by their agent under the fifth article of the treaty of Ghent.

The Secretary of State, Nov. 25th, 1825, wrote the Governor of this State, enclosing a copy of a note from the British Minister to him, and a copy of a note from Sir Howard Douglas to the British minister. On the 25th December, 1825, the Governor of this State transmitted the Secretary of State of the United States, a letter with a copy of the Resolve of this State respecting the settlers on the St. John and the Madawaska rivers under which the agent of the State acted—a copy of the Resolve of the Legislature of Massachusetts respecting the same—also the report of the Land Agent of Maine, detailing particularly the transactions of the two agents under said resolves. From which report it appears that the land agents had pursued the authority given them by the resolves, and had not done some of the acts complained of by the British.

The subject of the northeastern boundary was again noticed by the Governor in his message to both branches of the Legislature the 7th of Jan. 1826, which was answered by the Legislature in a report on the 17th January, and a resolve on the 26th of January, of the same year. "That the Governor for the time being, be authorized and requested, to take such measures as he may think expedient and effectual to procure for the use of the State, copies of all such maps, documents, publications, papers and surveys, relating to the northeastern boundary of the United States, described in the treaty of 1783, and such other information on that subject as he may deem necessary and useful for this State to be possessed of."

"That the Governor of this State in conjunction with the

Governor of Massachusetts, (provided the said Commonwealth shall concur in the measure,) be authorized to cause the eastern and northeastern lines of the State of Maine to be explored, and the monuments upon these lines, mentioned in the treaty of 1783, to be ascertained in such a manner as may be deemed most expedient."

The surveys of the unappropriated lands of Maine and Massachusetts, were continued, and five ranges of townships were surveyed, and extending from the line drawn west from the monument and extending from that line to Fish river, and near the river St. John.

The Fish river road extending from the east branch of the Penobscot river, northwardly to Fish river, was laid out also under the authority of the States.

The resolve was communicated to the Senators of this State in the Congress of the United States, and enclosed by the Governor on the day of its passage. And there was procured, in consequence of it, a copy of the general map compiled by the United States' surveyors, from surveys made under the fifth article of the treaty of Ghent.

The subject was again presented to both branches of the Legislature by the Governor, in his message, on the 4th of Jan. 1827—And the Governor also by special message communicated a letter, from the Secretary of State of the United States, dated January 29th, of the same year, accompanied by a letter of Charles R. Vaughan, Esq. the British minister, dated Jan. 7, 1827, wherein he complains of the acts of Maine and Massachusetts, in surveying and laying out townships and roads, and concludes by saying, "I think it advisable to make you acquainted without delay with the communication which I have received from the Lieut. Governor of New Brunswick, whom I beg leave to assure you cautiously abstains on his part from exercising any authority in the disputed territory which could invite encroachments as a measure of retaliation." All which were considered and became the subject of a report in the Legislature on the 12th day of February, 1827, and a Resolve was passed thereon, on the 23d day of the same month, respecting the northeastern boundary of the State, to wit :

"Resolved, That the Governor be, and he is hereby requested to take all such measures, both in acquiring information and in procuring a speedy adjustment of the dispute according to the treaty of 1783, as he may deem expedient and for the interest of the State."

To this period, nothing of any importance had been obtained under the resolves of the State although they had been regularly communicated, and all the information which was in possession of the government of this State, consisted in the few

and very few copies of letters from the British Minister, which had been elicited by the Resolves of the State of Maine ; and beyond that, there was no official information of the proceedings of the commission under the fifth article of the treaty of Ghent, nor the claims set up by the British, except what was derived from public reports, vague in their nature and uncertain in their character. It was not until long after the commissioners had terminated their labors, that any official communication was made, which tended to show the British claim, and even that, from the looseness of its phraseology seemed to convey no other distinct idea, than that the British, from causes known to themselves, claimed all the country north and west of Mars hill, as a part of the ancient province of Nova Scotia, and even that did not appear until near the middle of the year 1825. The delay to give information to the State of Maine, when it had been so often requested, particularly in the letter of the Governor, of July, 1820, to the executive of the United States, containing a request that some one might be added from the State of Maine to assist in the examination of the subject and considering that the sovereignty of the whole country to which the British had, in such an extraordinary manner and so contrary to the discussions which preceded the treaty of Ghent pretended a claim, was in Maine, and that the government of the United States had no constitutional authority to cede any portion of an independent sovereignty, directly, or by construction, is certainly very extraordinary,—and it cannot fail to appear extraordinary that the same policy on the part of the government of the United States should be continued, when, by uniting Maine in the controversy, all reasonable ground of complaint on her part would have been removed, at least, if she had, in her sovereign capacity, engaged in the controversy, she must have been concluded by the result. If she had mismanaged her concerns that could never have been brought up as a reasonable cause of complaint against the United States. Maine, as she was in a state of profound ignorance, had no opportunity to aid or assist the United States, nor does she claim that she has a right to interfere in the course its government chooses to adopt, but she has the right of reading the constitution of the United States—of judging for herself—and if she is deprived of the exercise of her sovereignty and her property, she has a right to remonstrate and assert her rights, and by force of the original compact she is entitled to the aid and assistance of the independent sovereignties constituting the United States, to reinstate her in that of which she may have been deprived, by an unjust and unconstitutional exercise of power.

The promptness, decision, perseverance and ability with which the Governor has executed the request contained in the last resolve merits the encomiums and approbation of the State. If further comment were necessary, the fact that all the information which had been so long, but unsuccessfully sought, was obtained, speaks a language more satisfactory to him and the State, than any thing we could add. As to the positions taken and maintained by the Governor, they must be in accordance with the views and common sense of the State, and we cannot present his discussions in a clearer or more acceptable light, than to request a fair, candid and impartial examination of them. With these remarks and without further comment, the correspondence between him and the Government of the United States is annexed.

Thus we have detailed at some length, the principal facts and circumstances touching the title and the extent of the title of the State to territory and jurisdiction, from which it appears, that our title is perfect to all the territory bounded by the southern line of the province of Lower Canada, to wit, by the line drawn, from the head of Connecticut river, along the lands which limit the sources of the rivers that fall into the river St. Lawrence, to the head of the bay of Chaleurs, and westward of the line drawn due north from the source of the river St. Croix to that line, being the line described and adopted by the British Government long before the Revolution, and being the lines which are also described and adopted by the provisional, and definitive treaties of peace. That the British Government have always, directly and indirectly conceded our title, in all the negotiations and discussions on the subject prior to the discussions under the fifth article of the treaty of Ghent, and made no claim of title founded on any intrusion of theirs, the ministers, who sought it as a cession, not having urged or even stated the fact, except by way of allusion, and that Massachusetts and Maine have always exercised jurisdiction according to the title of Maine and have continued their progress of surveys, sales and settlements, and other acts, and that the United States have always exercised general jurisdiction, and did in 1820, exercise acts of jurisdiction as far as there was any occasion for it. That there was no reason, from any knowledge in possession of the United States, until very recently, and still more recently in possession of this State, more immediately interested, to suppose, that, if the British Government had crossed the above described lines, she would not, as soon as the lines were surveyed, withdraw and cease to commit like acts of intrusion; and it has also appeared from representations made by the British Minister to the Secretary of State, "that the Lieutenant Gov-

ernor of New Brunswick had given assurances that he would cautiously abstain from all acts of authority which could invite encroachments as a measure of retaliation."

But notwithstanding all these facts, circumstances and assurances, John Baker a citizen of the State of Maine and the United States was arrested in his own dwelling house, situated on the land he purchased of, and holds by the deed from Massachusetts and Maine, on a warrant and other process served by the Sheriff of the county of York, accompanied by armed men and in the night time, at least before Baker had risen from his bed, and was carried to Frederickton and thrown into prison where he is now confined. Proseses have also been served, within our territory, on the Aroostook, and the cattle and property of our citizens have been taken away by the civil officers of New Brunswick. Baker is charged among other things, with an intrusion and trespass on the premises he holds under Massachusetts and Maine.

When the Governor of this State had received notice that the sovereignty of the State, by the officers of the government of New Brunswick, had been violated, in the abduction and imprisonment of one of its citizens and other acts, he issued his proclamation, and commissioned an agent of the State to proceed to the province of New Brunswick, to enquire into the cause of the arrest and the other violations of the State sovereignty, and to demand of the Government of New Brunswick the restoration of Baker; all which will more fully appear in the documents annexed. The Governor has in this, with his usual promptness, discretion and ability performed his duty to the State and its citizens. The agent in prosecution of the object of his commission proceeded to Frederickton the capitol of New Brunswick, and notified the government of his arrival and official capacity. He was not received in his official capacity. From what cause that arose, whether from their own policy or their misconstruction of the power and authority of the Governor of this State, is not certain.— It seems to us there would have been no objection to the recognition of the agent of this State, had his commission been only to demand a fugitive from justice, or that the Governor of New Brunswick would consider, that he was transcending his power, were he to send an agent to this State to demand a fugitive from his own government. Notwithstanding he was not received in an official character, we are happy to have it in our power to say, that he was politely received by the gentlemen of the place. The object of his agency, therefore, so far as it related to the arrest and imprisonment of Baker, totally failed, as it did also in some other respects.

His official capacity embraced two objects.

1st. To demand a delivery of persons.

2d. To obtain public information.

If not recognized for any other purpose, he might have been permitted as a person authorized to inquire into the truth of facts, important to the rights of the people of the State and peace of the Country.

From all the facts, we cannot perceive on what ground they can justify the violation of the State and National sovereignty, in the arrest of Baker, on his own soil and freehold, which he holds in fee under the States of Massachusetts and Maine, and the other acts of their officers on the Aroostook. On the ground of title they have no justification, and they can only justify themselves on the ground of a possession *de facto*, which cannot by the acknowledged principles of law be extended beyond actual occupation. In the case of Baker the settlement on his lot was commenced not within even a possession *de facto* feeble and slender as that would be ; and in relation to the Aroostook there is not even a possession of any kind, unless it has been acquired by the lawless depredations of individuals for which they have, from time to time, atoned by settlements with the agents of the State of Maine. Even the few, who have settled on the Aroostook, settled there considering it to be within this State and intending also to settle out of the province of New Brunswick. The course pursued by the British must be accounted for on another principle, than "a cautious abstinence of the exercise of authority which could invite encroachments as a measure of retaliation."

When the British are thus attempting to extend their intrusion and imprisoning and otherwise harassing by legal process citizens of Maine, they have constitutional claims on her protection ; and although Massachusetts and Maine from the treaty of peace have exercised the same jurisdiction over all the wild lands which had not been particularly appropriated for cultivation to this time ; if such acts are repeated it cannot be expected that Maine will be a quiet spectator. It will be her duty to enforce her laws within her own jurisdiction, and to protect her own rights and the rights of her citizens.

The Government of the United States have a duty to perform towards the State, and its citizens, not less towards those who are forcibly taken from the territory, and imprisoned, than towards those who are taken from the national marine. An agent has been sent to the province of New-Brunswick who has returned, and we have a confidence that the whole business will be adjusted, and that the constitutional rights of the State and the liberties and rights of the citizens will be protected and preserved.

Your committee, impressed with the importance of the subject to this State and the United States, and approving, most cordially, of the measures taken by the Governor, believe from the past that the State has a well founded assurance that its best interests will be protected and its constitutional rights preserved.

JOHN L. MEGQUIER,
 REUEL WILLIAMS,
 JOSHUA W. HATHAWAY,
 JOHN G. DEANE,
 HENRY W. FULLER,
 WILLIAM VANCE,
 JOSHUA CARPENTER,
 RUFUS BURNHAM.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, Jan. 26, 1828.

All which, with the annexed Resolve* and Documents, is respectfully submitted by order of the Committee.

JOHN G. DEANE.

HOUSE OF REPRESENTATIVES, February 14, 1828.

This Report was read, considered, and *unanimously* accepted.

Sent up for concurrence.

JOHN RUGGLES, SPEAKER.

Attest: JAMES L. CHILD, *Clerk of the House of Representatives.*

IN SENATE, February 16, 1828.

This Report was read, considered, and *unanimously* accepted, in concurrence with the House of Representatives.

ROBERT P. DUNLAP, PRESIDENT.

Attest: EBENEZER HUTCHINSON, *Secretary of the Senate.*

* The Resolve follows the Documents.

**[DUE TO ITS SIZE, THIS LAW HAS BEEN DIVIDED INTO TWO
ELECTRONIC FILES. FOR THE REMAINDER OF THE
CHAPTER, SEE THE SECOND FILE.]**